



Comprehensive Review of Food Labelling Law and Policy

Second submission from the Obesity Policy Coalition

Obesity Policy Coalition

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

The OPC is also concerned about the influence of food labelling on Australians' food choices and diets. As part of a multi-strategic approach to providing more useful consumer information and addressing food-related health issues such as overweight and obesity, the OPC believes there is a need for changes to food labelling law and policy to ensure consumers are able to make informed choices about food, and to guide consumers towards healthier products. Accordingly, the OPC is pleased to have the opportunity to participate in the Food Labelling Law and Policy Review.

SUMMARY

The Council of Australian Governments has agreed that the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) undertake a comprehensive Review of Food Labelling Law and Policy (the Review). An independent Review Panel has been appointed to undertake the Review.

This submission follows an earlier submission from the OPC addressing the Matters for Review outlined in the Terms of Reference. This submission addresses the following questions raised in the Issues Consultation Paper that the OPC considers relevant to overweight and obesity prevention: questions 1-6, 8-10, 12-17, 20, 21, 23, and 25-34.

In addressing these questions, the OPC makes a number of recommendations for changes to food labelling law and policy, with the following main aims:

- Ensure consumers are provided with adequate nutritional information and are not misled about the health or nutritional benefits of food, so that they are able to make informed food choices.
- Help consumers interpret and understand nutritional information, readily assess and compare the nutritional content and healthiness of food products, and readily identify unhealthy and healthy products.
- Encourage consumers to make healthier food choices, and to minimise consumption of unhealthy foods.
- Ensure consistent and effective enforcement of food labelling regulation.

The OPC's main recommendations for changes to food labelling law and policy are as follows:

Summary of recommendations

1. Mandatory front-of-pack traffic light labelling system

A mandatory, uniform front-of-pack labelling scheme should be introduced that requires the front of all packaged food products to display traffic light signposts to indicate the levels of fat, saturated fat, sugar and sodium in the product (high: red; medium: orange; low: green).

Consideration should also be given to requiring the following additional front-of-pack signposts: a signpost indicating the number of kilojoules in a serve of a product; traffic light signposts indicating levels of positive nutrients, such as fibre, for certain food categories; and a further traffic light signpost providing an overall rating of a product's nutritional profile or healthiness.

2. Nutrition labelling of menus in fast food outlets

Menus and menu boards in fast food outlets should be required to display traffic light signposts to indicate the levels of fat, saturated fat, sugar and sodium in each menu item. Consideration should also be given to requiring menu boards, menus to display additional signposts as outlined in recommendation 1 above. Tags next to assisted- or self-service cabinets or bars in fast food outlets should also be required to display this nutritional information.

3. Nutrition labelling of menus in public institutions

Retail food outlets in public institutions (such as hospitals, universities, schools, pre-schools and government-owned workplaces) should also be required to display traffic light nutritional information (as outlined in recommendations 1 and 2 above) on menus and menu boards, and tags next to assisted- or self-service cabinets or bars.

4. Nutrition labelling of vending machines

Consideration should be given to requiring food vending machines to display traffic light nutritional information (as outlined above) in prominent signs on the front of machines.

5. Improved regulation of nutrition content claims

Nutrition content claims on food packaging and in food advertising (i.e. claims about the levels of particular nutrients, such as fat and sugar, in products) should be subject to nutrient profile qualifying criteria so that they are only permitted in relation to products that have healthy nutritional profiles overall.

6. Nutrition information disclosure in food advertising

Food advertisers should be required to disclose nutrition information with interpretive guidance (e.g. traffic light signposts) in food advertisements.

7. National food labelling enforcement authority

Responsibility for administration and enforcement of labelling standards should be vested in a national authority. The OPC recommends that this should be a unit of, or agency overseen by, the ACCC.

8. Food labelling principles and guidelines

To improve consistency in interpretation and administration of food labelling standards, the OPC recommends development of overarching food labelling principles, and more detailed food

labelling interpretation guidelines.

PART 1: CONTEXT

1. To what extent should the food regulatory system be used to meet broader public health objectives?

1.1 Public health objectives of food regulation

The object of the *Food Standards Australia New Zealand Act 1991* (Cth) is 'to ensure a high standard of public health protection throughout Australia and New Zealand' (section 3). Under this Act, the objectives of Food Standards Australia New Zealand in developing or reviewing food regulatory measures are: (a) the protection of public health and safety; (b) the provision of adequate information about food to enable consumers to make informed choices; and (c) the prevention of misleading or deceptive conduct (section 18).

As discussed in the OPC's first submission to the Review, the public health objective of food regulation must be understood as including not only the short-term objectives of protecting consumers from food-borne illness and ensuring consumers are able to make informed food¹ choices, but also the long-term objectives of reducing the harm caused by diet-related chronic disease.

In 2008, the Ministerial Council endorsed an *Overarching Strategic Statement for the Food Regulatory System*, which set out the broad aims of the system.

We agree with the aims set out in the statement, and are encouraged by the recognition of the crucial role that food regulation must play in protecting public health. In particular, we strongly support the following two aims:

- Enable consumers to make informed choices about food by ensuring they have sufficient information and preventing them from being misled.
- Promote healthy food choices.

We believe promoting healthy food choices should be understood as involving not only promoting consumption of healthy, nutritious foods (including fruit and vegetables), but also deterring consumption of energy-dense, nutrient poor foods.

We also strongly agree that protecting public health and safety should be the overriding priority of the system.

However, while we strongly support the inclusion and explanation of public health objectives in the strategic statement, this will be of no consequence unless steps are taken to ensure this translates to concrete changes to the food regulatory system to enable consumers to make informed food choices and to promote healthy eating.

As discussed in the OPC's first submission to the Labelling Review, to facilitate such changes, there is a need for an overarching approach to food labelling law and policy that is driven by public health and consumer protection objectives, and stronger Ministerial Council policy guidance.

As part of ensuring this occurs, we believe there is a need for a definition of 'public health' to be included in the *Food Standards Australia New Zealand Act 1991*. This definition should clarify the

¹ Any reference to 'food' in this submission is intended include food and non-alcoholic beverages.

role that food regulation must play in preventing long-term ill health, death and disability caused by chronic disease, and promoting long-term health and wellbeing. It should also include reference to public health principles of upstream prevention and precautionary policy-making, and the importance of a whole of population focus.

The role that food regulation should play in preventing obesity and chronic disease is discussed further below.

1.2 Crucial role of food regulation in preventing obesity and chronic disease

The food regulatory system must play a central role in protecting and promoting the long-term health of the public by reducing levels of obesity and the incidence of diet-related chronic disease.

As discussed in the OPC's first submission to the Labelling Review, the increasing prevalence of overweight and obesity in Australia is a serious public health problem, with significant health and economic burdens. Urgent regulatory and policy reform is needed to address the drivers of this epidemic.

A key cause of the recent increase in overweight and obesity prevalence is increased consumption of energy-dense processed foods.² Major factors contributing to increased consumption of these foods, and to accelerating rates of overweight and obesity, include the greater production and availability, increased portion sizes, misleading or inadequate labelling, and heavy marketing of these foods.

The food regulatory system is the key lever through which these factors can be effectively controlled or moderated. Food regulation controls the quality and composition of food sold in Australia, and the way food is labelled and marketed to consumers. It therefore has a direct influence on consumers' ability to make healthy choices and the types of foods they purchase and ultimately consume. Accordingly, it is crucial that improved regulation of food labelling, marketing and composition is a central part of a multi-strategy approach to reducing levels of overweight and obesity, and diet-related chronic disease.

Public health experts agree that education campaigns and appeals to personal responsibility alone cannot address the obesity problem.³ While it is certainly important that people exercise personal responsibility, and crucial that education and social marketing are components of a comprehensive approach to dealing with obesity, we know from other areas, such as road safety and tobacco, that the impact of these strategies will be limited unless they are accompanied by policy and regulatory measures to create an environment that supports healthy choices. Experts agree that to deal with the obesity problem, policy and regulatory changes are urgently needed to improve the food and physical activity environment in Australia.⁴

These must include changes to the food regulatory system to address the influence of the labelling,

² World Health Organization. *Childhood overweight and obesity: what are the causes?* : World Health Organisation, 2010, <http://www.who.int/dietphysicalactivity/childhood_why/en/index.html>, at 10 March 2010.

³ See, eg: Swinburn, B. (2008) 'Obesity prevention: the role of policies, laws and regulations' *Australia and New Zealand Health Policy*, 5: 12, <<http://www.anzhealthpolicy.com/content/pdf/1743-8462-5-12.pdf>> at 7 May 2010; Armstrong, R. (2007) 'Obesity, law and personal responsibility' *Medical Journal of Australia*, 186(1), 20, <http://www.mja.com.au/public/issues/186_01_010107/armstrong_fm.html> at 7 May 2010; Zimmet, P.J., & James, W.P.T. (2006) 'The unstoppable obesity and diabetes juggernaut: what should politicians do?' *Medical Journal of Australia*, 185(4), 187-188, <http://www.mja.com.au/public/issues/185_04_210806/zim10521_fm.html> at 7 May 2010;

⁴ As above.

packaging, marketing and composition of processed foods on Australians' food choices and diets. In particular, regulation of food labelling must ensure consumers are able to make informed food choices, and must be used to encourage a shift to healthier eating patterns.

As discussed in the OPC's first submission to the review (see paragraphs 1.1.1 and 1.2.1), the food regulation system is currently failing to do the following:

- Ensure the accuracy of nutrition information on product labelling and packaging.
- Provide a single, uniform nutrition information labelling system that allows consumers to quickly and readily assess and compare the nutritional content and healthiness of foods.
- Ensure the provision of nutrition information about foods eaten outside the home, particularly food sold in fast food outlets, public institutions and vending machines.
- Prevent potentially misleading labelling practices, including food manufacturers' practice of making selective claims about certain nutritional or other characteristics of products but failing to disclose with equal prominence information about unhealthy characteristics, in order to create the impression that the products are healthy or good for consumers overall. This practice is likely to mislead consumers, impede their ability to make informed food choices, and drive consumption of unhealthy food.

The OPC is also concerned that the food regulatory system is failing to respond in a proactive and timely manner to emerging public health issues, and believes this is due to a lack of clear and overarching Ministerial Council policy guidance, the length of time taken by FSANZ to change and develop food standards, and problems with inadequate and inconsistent enforcement of food standards.

The OPC strongly encourages the Review panel to recommend changes to food labelling regulation and policy to:

- provide for a single, uniform and mandatory colour-coded front-of-pack labelling scheme;
- introduce nutrition information labelling requirements in fast food outlets, public institutions and on vending machines;
- require nutrition information disclosure in food advertising;
- strengthen regulation of health and nutrition content claims;
- develop clear food labelling principles and interpretation guidelines; and
- establish a central food labelling enforcement agency.

These issues are discussed in detail in the remainder of this submission.

PART 2: OVERVIEW

2. What is adequate information and to what extent does such information need to be physically present on the label or be provided through other means (eg education or website)?

2.1 What is adequate information?

To meet the aims of enabling consumers to make informed choices about food and promoting healthy choices, the food regulatory system must ensure consumers are provided with nutrition information which:

- is clear, simple, legible and easy to understand;
- is useful and relevant;
- is understandable by and useful for consumers from all demographic groups;
- is accompanied by interpretive guidance to help consumers interpret and understand nutritional information, and assess and compare the healthiness of products;
- promotes healthier food choices and deters consumers from choosing, energy-dense, nutrient-poor products, including by highlighting information about unhealthy levels of nutrients in products; and
- is presented at the place where, and time when, consumers are making purchase decisions.

The type, amount and format of information that is provided should be consistent for all products within particular categories.

To meet the aims set out above, the OPC recommends the following changes to food labelling regulation:

- Introduction of a single, uniform and mandatory colour-coded interpretive FOPL scheme.
- Introduction of mandatory labelling requirements for fast food outlets, food retail outlets in public institutions, and vending machines.
- Improved regulation of nutrition content claims.

These recommendations are discussed in the remainder of the submission.

2.2 Retention and strengthening of NIP requirements

In addition, the OPC strongly supports retention of existing mandatory requirements for the display of nutrition information panels (NIPs) on food packages (irrespective of whether a front-of-pack labelling scheme is introduced). This is particularly crucial for consumers with specific dietary needs or medical problems, who need detailed information about the nutritional content of products. Access to nutritional information about food products should also be considered an important consumer right. Consumers rely increasingly on processed, pre-packaged food, and need to be able to make informed choices about products they purchase based on the information provided on food labels.

However, as discussed in the OPC's first submission to the review, consumers can find NIPs confusing and difficult to interpret. There is a need for NIP requirements to be strengthened to improve the content and presentation of NIPs (see paragraphs 1.1.1 and 6.1 of the OPC's first submission).

We have again included as an appendix to this submission a document outlining proposals by the US Center for Science in the Public Interest (CSPI) for improving the NIP in the US.

We recommend that the panel consider introducing the following additional requirements for NIPs:

- The NIP should highlight levels of kilojoules, saturated fat, sugar and salt, as well as levels of certain beneficial nutrients, such as fibre, per 100g of the product (in large, bold and/or coloured font – see CSPI example).
- If a colour-coded front-of-pack labelling system is not introduced (see discussion of this proposal in the OPC's first submission to the Review and in section 8.1 below), the NIP should also indicate whether levels of kilojoules, saturated fat, sugar and salt, and beneficial nutrients, such as fibre, per 100g of the product are high, medium or low (e.g. using traffic light colours).
- The NIP should display and highlight information about the trans fat content of products (in large, bold and/or coloured font). (This is discussed in section 9.1 below.)

In addition, to avoid the possibility of manufacturers manipulating serving sizes to artificially lower nutritional values in the NIP, the OPC recommends that consideration should be given to regulating serving sizes as proposed in section 8.1 below in relation to traffic light labelling.

We also recommend that the panel consider additional proposals outlined by CSPI for improving the content and format of the NIP.

Any changes to the NIP would need to be accompanied by consumer education.

2.3 To what extent does information need to be physically present on label?

Nutrition information must be physically present on food labels so that consumers are alerted to the information at the point when they are making decisions about purchase and at a later stage when they are preparing or consuming food at home. If this is not possible due to small package sizes or because food is packaged at the time it is sold, information should be provided on menus or menu boards or displayed in the immediate vicinity of where the food is displayed and sold.

It is also important for nutrition information (such as colour-coded front-of-pack labelling information or counter-statements) to be presented on the front of food packs to balance the effect of other nutrition information highlighted by manufacturers that has the potential to mislead or confuse consumers.

Provision of nutrition information through education, websites, in-store barcode scanning, or any means other than product labelling, is highly unlikely to be an effective substitute to provision of nutrition information on labels to inform consumers. Many consumers are very busy and have limited time for grocery shopping, particularly if accompanied by children. Consumers are unlikely to have the time or motivation to actively seek out nutritional information. Provision of nutrition information in these ways may also disadvantage certain groups of consumers, including consumers from lower socio-economic backgrounds, linguistically diverse consumers, the elderly, and consumers with lower levels of literacy or numeracy.

While we certainly believe consumer education about nutrition is very important and should accompany any nutrition information labelling requirements that are introduced, we do not think education is an effective substitute for provision of nutrition information on food labels. Provision of nutrition information through education requires consumers to attend to education campaigns and

retain the information, and then retrieve the information when they make purchase decisions and consume food. It may be difficult for some consumers to retain nutrition information communicated through education campaigns, and use it to effectively compare products, and make decisions about which products are healthier and/or most suitable for their dietary needs.

Provision of nutrition information through websites requires consumers to look up the information in advance of purchase. The ability of many consumers to do this would be constrained by factors such as lack of access to the internet and lack of time, and most consumers would not be sufficiently organised or motivated. This would only be useful for consumers who shop for food and eat out in a very organised and planned, rather than spontaneous, manner, and would only benefit those consumers who are already highly interested in the nutritional content of products and motivated to eat healthily. This would cause particular disadvantage to certain groups of consumers, such as those referred to above.

3. How can accurate and consistent labelling be ensured?

A NSW Food Authority pilot study conducted in 2006 found that 84% of food labels studied inaccurately stated products' nutrition contents.⁵ Nineteen per cent of foods claimed to be low in fat contained more fat than claimed, and two-thirds of food claimed to be low in kilojoules understated the amount of kilojoules in the product. One-third of products tested exceeded their claimed sugar content.

To ensure that nutrition information labelling is accurate and consistent, specific labelling requirements must be imposed through government regulation. Self-regulatory approaches are not effective to ensure accurate and consistent labelling. Non-compliance with labelling requirements is already a problem, and the level of compliance with the self-regulatory Code of Practice on Nutrition Content Claims has been found to be particularly low.⁶ Requirements in this Code of Practice should be incorporated in the Food Standards Code, and existing and any new labelling requirements should also continue to be imposed under the Food Standards Code. A move to any further self-regulatory approaches for managing labelling would exacerbate existing problems with compliance with labelling requirements.

In addition, as discussed in the OPC's first submission to the Review, improvements are needed in the enforcement and monitoring of labelling standards in the Food Standards Code. There is a need for better coordination of regulators' enforcement activities, and for greater priority and more resources to be given to monitoring and enforcement of labelling standards in relation to other food standards. Regular tests of the accuracy of nutrition information panels should be conducted.

To improve enforcement of food labelling standards, the OPC recommends the establishment of a central food labelling enforcement agency. In addition, the OPC recommends that clear, plain English guidelines on interpretation of food labelling standards and a clear strategy for enforcement of labelling standards should be developed. Steps should also be taken to ensure authorities enforcing food-labelling standards have appropriate training and expertise. These recommendations are discussed further in Part 5 of this submission.

⁵ Fabiansson, S. Precision in nutritional information declarations on food labels, *Asia Pacific Journal of Clinical Nutrition*, 15(4), 2006.

⁶ Williams, P.G., Yeatman, H., Zakrezewski, S., Aboozaid, B., Henshaw, S., Ingram, K., Rankine, A., Walcott, S., & Ghani, F. (2003) 'Nutrition and related claims used on packaged Australian foods – implications for regulation', *Asia Pacific Journal of Clinical Nutrition*, 12, 138-150.

To improve the accuracy of nutrition information labelling, the OPC also recommends that consideration should be given to changing the current requirement for nutrition information panels to list the 'average quantity' of nutrients (per serve and unit quantity (100g/100 ml)). Allowing nutrition information panels to list *average* (rather than actual) quantities gives food manufacturers a loophole in cases where nutritional content differs from what is stated in the NIP, and makes the requirement difficult to enforce. A possible alternative approach that should be considered is to require the accuracy of nutrition information to fall within 'tolerance ranges' or upper and lower tolerance limits (e.g. -20% for beneficial nutrients and +20% for detrimental nutrients) as is the case in other countries, such as Japan, Taiwan and Thailand. This would allow enforcement action to be taken in cases where the actual nutritional content differs by more than a certain percentage from the nutrition information stated in the NIP.

In addition to the problem of inaccurate labelling, the OPC is concerned about the potential for consumers to be misled by nutrition or fruit content claims that are often prominently displayed on the front of food packaging (e.g. 'made with fruit', 'packed with whole grains' or 'low in fat'), and by manufacturers' use of text, pictures and product names on food packaging to create the impression that products convey nutritional or health benefits. Such claims may be technically accurate, but manufacturers' failure to draw attention to other unhealthy aspects of a product (e.g. high sugar or saturated fat content) may create an overall misleading impression that a product is a healthy choice or good for consumers, when in fact it is unhealthy.

The OPC believes the selective use of these nutrition and fruit content claims by food manufacturers is often likely to mislead consumers in breach of the Trade Practices Act and state and territory fair trading legislation, and that the ACCC and state consumer affairs agencies need to take a stronger approach to enforcement in relation to these types of claims. However, the OPC has made a number of submissions to regulators about what it considers to be misleading use of these claims, and in the OPC's experience, regulators are hesitant to take action in relation to nutrition content claims because the legal argument that they are misleading is not as clear as in the case of claims that are literally inaccurate, and/or because regulators are constrained by lack of resources. Therefore, the OPC does not believe it is sufficient to rely on enforcement of general consumer protection legislation to address the problem of potentially misleading nutrition content claims, and recommends that these claims should be made subject to nutrient profile qualifying criteria (as proposed for health claims under the proposed new health claims standard *Proposal P293 for Nutrition, Health and Related Claims.*)

4. What principles should guide decisions about government intervention on food labelling?

4.1 Benefits of labelling interventions, and costs of poor food choices and obesity

The OPC recognises the importance of considering the costs of labelling interventions. However, it is also vitally important to consider the direct and indirect economic costs of inadequate, inaccurate and misleading labelling that leads consumers to less healthy food choices, as well as the social and individual costs of adverse health consequences, and interference with the rights of consumers.

To properly assess the impact of food labelling and marketing, governments must take into account the impact of labelling and marketing on the food choices of Australians, and the prevalence of overweight and obesity in Australia, and the social and economic costs of overweight and obesity, including the costs of health care, productivity losses, disability, loss of wellbeing and premature death. Governments must also consider the cost savings that could be made through food labelling

that encourages healthier food choices.

We recognise that this is a balancing exercise, but the public health impact of food labelling must be given greater weight in this equation than any cost to industry.

Healthier eating and reduced incidence and prevalence of overweight and obesity will benefit not only the health of consumers, but also the economic interests of governments and the community. A cost-benefit analysis prepared on behalf of FSANZ prior to the introduction of mandatory nutrition information requirements estimated that between 320-640 more deaths from diet-related diseases would occur every year that mandatory labelling was delayed, that the costs to the health care system would be between \$47-67 million, and that value of life would be lowered by \$341-486 million.⁷

As discussed, the annual economic costs of obesity in Australia are estimated to be \$58.2 billion, comprising \$8.3 billion in financial costs and \$49.9 billion in net costs of lost wellbeing.⁸ The bulk of this burden falls on individuals and families, then industry and then government. Any costs incurred to government, industry and the community as a result of developing, implementing and enforcing improved food labelling (together with associated consumer education costs) will be far outweighed by the savings in the costs of obesity in Australia.

In addition, while the food industry may incur some initial costs when first adapting their packaging to meet any new food labelling requirements, these costs are likely to be passed onto consumers but are unlikely to be unduly burdensome (for industry or consumers). A report released by the World Cancer Research Fund (WCRF) and the American Institute for Cancer Research (AICR) found that changes to labelling systems are not expensive and can put in place 'fairly quickly'.⁹

It should also be noted that food manufacturers regularly make changes to food packaging for marketing purposes, for example, to promote competitions and give-aways, and link packaging to advertising campaigns. This is particularly common with respect to foods directed to children. This practice would not appear to be resulting in financial burden and indicates that packaging can be changed quickly and easily and at little or no cost to consumers.

4.2 Evidence base

In making decisions about labelling interventions, the OPC strongly supports the Government giving proper consideration to the evidence base. This should involve proper evaluation of the effectiveness of existing labelling standards and the likely effectiveness of proposed new approaches.

However, reliance on the evidence base should not constrain or prevent implementation of promising labelling initiatives where evidence is not entirely conclusive. Given the urgency of the obesity crisis, the Government must take a precautionary 'learning by doing' approach in considering labelling interventions and not wait for complete scientific certainty.

⁷ *Costing a one-year delay to the introduction of mandatory nutrition labelling*. Canberra, Food Standards Australia New Zealand, 2002, available at http://www.foodstandards.gov.au/srcfiles/costing_a_one-year_delay.pdf, accessed 7 June 2007.

⁸ Access Economics. The growing cost of obesity in 2008. August 2008. Canberra: Diabetes Australia.

⁹ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.63.

The OPC supports the statement on page 20 of the *Overarching Strategic Statement for the Food Regulatory System* that the absence of scientific certainty will not be allowed to delay proportionate action.

4.3 Criteria for considering labelling interventions

The OPC recommends that the criteria used in assessing the efficacy of potential labelling interventions should include the following:

1. Universality and consistency

For labelling schemes to be effective, they must apply consistently to all products within particular food categories. This is necessary to enable consumers to effectively compare the nutritional properties and healthiness of different products.

2. Accuracy, clarity and comprehensibility

Food labels should be accurate, easy for all consumers to understand (including consumers in lower socio-economic and culturally and linguistically diverse groups and consumers with low literacy/numeracy) and should be in a clear format that enables consumers to process nutrition information readily and quickly.

Labelling schemes should be designed to reduce the capacity for manufacturers to make nutrition content claims that may mislead, deceive or confuse consumers.

3. Usefulness and relevance

Food labels should be relevant and useful for consumers in assessing the healthiness and nutritional profile of products, and should provide sufficient information to enable consumers to make informed choices about food purchases.

This should include relevant and sufficient information for consumers with specific dietary requirements, such as consumers with allergies, intolerances, or other health problems, (e.g. diabetes and kidney disease), and vegetarians or vegans.

4. Provision of interpretive guidance

Food labels should also provide interpretive guidance that gives context to nutritional information and helps consumers to understand how healthy products are overall, without need for a high level of prior knowledge and understanding of nutrition.

5. Influence on consumers' food choices

A key aim of food labelling initiatives should be to influence consumers to make healthier food choices. This should involve deterring consumers from choosing unhealthy foods, as well as encouraging them to choose healthy foods. Labelling initiatives that encourage consumers to eat more nutrient rich products (i.e. fruit and vegetables) and that discourage consumers from choosing energy-dense and nutrient-poor foods will have the greatest impact on the health of consumers and the overweight and obesity crisis in Australia.

6. Influence on the food supply

A secondary aim of food labelling initiatives should be to drive change within the food supply by encouraging food manufactures to develop new healthier products, or to reformulate existing products to make them healthier.

5. What criteria should determine the appropriate tools for intervention?

The OPC suggests that the following criteria should be used to determine the appropriate tools for intervention.

1. The consequences and impact of inadequate food labelling (direct and indirect and short- and long-term)

Government guides to regulation advise that self-regulation should be considered where the problem in question poses 'no strong public interest concern, in particular, no major public health and safety concern' and 'the problem is a low-risk event of low impact or significance'.¹⁰ In the OPC's view, this is clearly not the case with respect to food labelling.

Mandatory labelling requirements are vital for ensuring food safety and for protecting the health of the population. As noted above, prior to the introduction of mandatory nutrition information labelling, it was estimated that 320-640 more deaths from diet-related diseases would occur every year that mandatory labelling was delayed, that the costs to the health care system would be between \$47-67 million, and that value of life would be lowered by \$341-486 million.¹¹

In the short-term inadequate food labelling, which fails to properly inform consumers with respect to allergens, ingredients, and the nutritional profile of products, poses serious acute risks to consumers' short-term health.

In the long-term, inadequate food labelling, which fails to guide consumers towards healthy choices, is likely to lead to higher levels of diet-related disease and death. As discussed, the current levels of overweight and obesity in this country is a major public health crisis, and there is a strong public interest need for improved food labelling to help address this crisis as part of a multi-strategic approach. The public health and economic consequences of failing to take effective action to address the obesity crisis will be significant, as outlined in section 4.1 above and the OPC's first submission to the Review.

2. Industry incentives to effectively self-regulate and alignment of consumer and industry interests

Another criterion cited in government guides to regulation for considering the use of self-regulation is whether the problem can be fixed through the market itself through incentives (such as industry survival or market advantage) for industry to develop and comply with

¹⁰ Office of Best Practice Regulation, Australian Government (2007) *Best Practice Regulation Handbook*, Canberra: Commonwealth of Australia; Department of Treasury and Finance, Victorian Government (2007) *Victorian Guide to Regulation*, Melbourne: Victorian Government.

¹¹ *Costing a one-year delay to the introduction of mandatory nutrition labelling*. Canberra, Food Standards Australia New Zealand, 2002, available at http://www.foodstandards.gov.au/srcfiles/costing_a_one-year_delay.pdf, accessed 7 June 2007.

effective self-regulatory arrangements.¹² Self-regulation is most likely to be effective when the interests of industry and consumers align.¹³

The OPC does not believe market incentives are a reliable mechanism for ensuring industry will voluntarily develop and comply with labelling schemes that are effective to guide consumers to healthier food choices and which may result in a decline in sales of unhealthy products. Competition between manufacturers has certainly not been sufficient to eliminate bias in relation to the type of information manufacturers highlight on food packaging. Manufacturers gain significant market advantages from making health and nutrition content claims, and many would be disadvantaged in the market by displaying 'negative' nutrition information on the front of packaging. For example, it is unlikely that manufacturers of unhealthy food would voluntarily agree to a scheme that required them to display red traffic light labels.

3. Importance of universal and consistent labelling

A further criterion for effective self-regulation included in government regulation guides is adequate industry coverage.¹⁴ In the OPC's view, this is particularly important with respect to food labelling. The effectiveness of any nutrition information labelling requirements, particularly any front-of-pack labelling scheme that is introduced, will depend on universal application to all products, and consistent presentation of labelling. This ensures consumers are able to develop familiarity with and understanding of nutrition labels, and make effective comparisons between products.

The OPC does not believe self-regulation is effective to ensure universal application or consistent presentation of nutrition labelling. Voluntary labelling schemes are unlikely to apply to all products, and lead to inconsistencies in the type and format of information displayed on labels. This is true of the 'Percent Daily Intake' front-of-pack labeling scheme developed by the Australian Food and Grocery Council. The scheme does not apply to all products, and the information displayed on the labels differs between products. The problems with this scheme are described in detail in section 8.1.3 below.

4. Record of industry compliance with self-regulatory and legislative provisions

In considering the appropriate tools for intervention, the OPC suggests that the record of industry compliance with labelling requirements should also be considered. As discussed in section 3 above, levels of compliance with nutrition labelling requirements have been found to be low.

The OPC believes the efficacy of any nutrition information labelling requirements depends on independent monitoring and enforcement, and effective compliance mechanisms, including appropriate sanctions. Government regulation is needed to ensure these things.

¹² Office of Best Practice Regulation, Australian Government (2007) *Best Practice Regulation Handbook*, Canberra: Commonwealth of Australia; Department of Treasury and Finance, Victorian Government (2007) *Victorian Guide to Regulation*, Melbourne: Victorian Government.

¹³ Taskforce on Industry Self-Regulation, Australian Government (2000) *Industry Self-Regulation in Consumer Markets*, Canberra: Australian Government.

¹⁴ Office of Best Practice Regulation, Australian Government (2007) *Best Practice Regulation Handbook*, Canberra: Commonwealth of Australia; Department of Treasury and Finance, Victorian Government (2007) *Victorian Guide to Regulation*, Melbourne: Victorian Government.

6. Is this a satisfactory spectrum for labelling requirements?

Currently the ingredient labelling and nutrition information labelling requirements in the Food Standards Code (Standards 1.2.1 and 1.2.8) do not apply to food that is:

- not packaged;
- made and packaged on the premises from which it is sold;
- packaged in the presence of the purchaser; or
- packaged and displayed in an assisted service cabinet, (and certain other foods including whole or cut fresh fruit or vegetables, and food sold at fundraising events).

Display of nutrition information panels is also not a requirement for:

- alcoholic beverages;
- foods in small packages (with a surface area of less than 100cm); and
- prepared filled rolls, sandwiches, bagels and similar products, (and certain other foods including herbs, vinegar and spices).

However, nutrition information requirements do apply to these foods where a nutrition content claim is made.

This largely exempts most fast food from ingredient labelling and nutrition information requirements. It also exempts many small confectionery products and alcoholic beverages from the requirement to display a nutrition information panel.

The OPC believes that nutrition information requirements should extend to food sold in 'fast food outlets'. Fast food outlets should be required to display nutrition information on menus and menu boards at the point of sale. This proposal is discussed below in section 8.3 of this submission.

Full nutrition information requirements should also extend to food that is in small packages. This information could be set out in fold-out labels or labels attached to shelves.

In addition, the OPC recommends that full nutrition information requirements should extend to alcoholic beverages. The OPC supports the Alcohol Policy Coalition's submission to the Review in relation to labelling of alcoholic beverages.

8. In what ways can food labelling be used to support health promotion initiatives?

There are six key ways in which the OPC recommends that food labelling should be used to support health promotion initiatives, in particular prevention of overweight and obesity, by encouraging consumers to choose and consume healthier food products:

1. Introduction of a mandatory, single, uniform front-of-pack nutrition-labelling scheme with an interpretative element (ideally traffic light labelling).
2. Nutrition labelling on menus in fast food outlets.
3. Nutrition labelling on vending machines.
4. Nutrition labelling on menus in food retail outlets in public institutions.
5. Nutrition information disclosure in food advertisements.

6. Improved regulation of nutrition content claims.

These recommendations are discussed below.

8.1 Mandatory front-of-pack labelling scheme - summary

The Obesity Policy Coalition believes there is an urgent need for simple, uniform, interpretive nutrition information labels on the front of food packaging to inform consumers of the healthiness of food products at the point of sale.

Food production is becoming increasingly complex. Consumers are increasingly removed from food production and rely more on processed pre-packaged food. As a result, they need to be able to make informed choices about the product they are purchasing based on the information provided by food manufacturers on product labels.¹⁵ Currently, food labels fail to provide simple, accessible nutrition information that allows consumers to readily understand how healthy a product is. Standard nutrition information panels that are required to appear on food packaging are difficult for consumers to understand at a glance. There are also a number of different voluntary labelling and endorsement schemes, and many manufactures use product names, pictures and nutrition claims on food packaging that have the potential to mislead consumers as to the healthiness of products. The varying labelling schemes, and the large amount of nutrition-related information on food packaging can cause confusion among consumers, particularly those from lower socio-economic groups and non-English speaking backgrounds.

A clear, consistent and well-designed front-of-pack labelling (FOPL) scheme, which provides interpretive guidance as to the nutritional content of food products, would help to properly inform consumers about the healthiness of food products, and would assist and encourage consumers to identify and make healthier food choices. It would enable them to compare foods consistently across the whole food supply and within food categories. It would also reduce the likelihood of consumers being misled by food packaging, influence the food industry to reformulate and develop healthier food products, and ultimately reduce levels of overweight, obesity and chronic disease, as part of a comprehensive, multi-strategic approach.

Research has shown that consumers want a simplified, consistent and easy-to-use FOPL system, and there is significant evidence that improved nutrition labelling would help consumers to make healthier food choices.

As noted in the OPC's first submission to the Review, in September last year the National Preventative Health Taskforce recommended the introduction of a front-of-pack labelling system over three years, following a trial of different approaches. The Taskforce emphasised that any FOPL scheme should be "actively enforced with appropriate penalties and closely monitored and evaluated against its specified goals and objectives".

The OPC believes a nationally consistent FOPL scheme should be implemented under the *Australia New Zealand Food Standards Code*, and should apply to all foods required to display a nutritional information panel.

¹⁵ Which? *Consultation response: general and key principles for food labelling: a framework for the provision of mandatory food information labelling requirements for food sold loose*, 11 September 2007, London: Which, available at <http://www.which.co.uk/documents/pdf/general-and-key-principles-for-food-labelling-fsa--which---consultation-response--177073.pdf>, accessed 25 January 2010.

Specifically, the OPC recommends the introduction of a colour-coded “traffic light” FOPL system, which uses multiple traffic light colours (green, orange or red) to indicate whether the levels of individual nutrients in a product (fat, saturated fat, sugar and salt) are low, medium or high. Evidence demonstrates that consumers (including those from low socio-economic backgrounds) would benefit most from a colour-coded FOPL scheme, such as a traffic light scheme.

Any FOPL scheme that is introduced must provide clear, simple, interpretive information that is readily understood by most demographic groups, and must be consistent across all products. The scheme must be uniformly applied, actively monitored and enforced, and regularly reviewed and evaluated.

To ensure universal compliance, any FOPL scheme would need to be mandatory and imposed through legislation. At the very least, governments should control or oversee the development and implementation of the scheme, and governments and/or an independent agency should be responsible for enforcement, monitoring and evaluation.

It will also be crucial that any FOPL scheme is accompanied by targeted consumer education.

8.1.1 Research in support of a uniform FOPL scheme

A significant amount of Australian and international research now exists to demonstrate that:

- a simple and easy to use FOPL scheme can enable consumers to understand nutrition information, interpret it and make healthier food choices;
- an interpretative colour coded scheme, such as a traffic light scheme, is likely to be easier to interpret and less confusing than a non-interpretive scheme, such as a percentage daily intake scheme;
- FOPL schemes may encourage food manufactures to reformulate the nutritional composition of their food to meet the nutrient criteria levels; and
- to be effective, implementation of any FOPL scheme must be supported by an awareness and education campaigns and healthy eating initiatives.

In February 2009, the World Cancer Research Fund (WCRF) and the American Institute for Cancer Research (AICR) released the most authoritative and comprehensive reports ever published on food, nutrition, physical activity and the prevention of cancer.¹⁶ Following a comprehensive and systematic review of the evidence on the effectiveness of a range of interventions, the WCRF and AICR recommended, among other things, that governments act to introduce clear, mandatory and uniform food labelling requirements.

The review concluded that food labelling can be confusing, misleading and poorly understood, and that simple, clear, mandatory and uniform food labelling is required to reach the widest range of people in the most equitable way, and help them to make healthier food choices. It also found that food labelling is more effective when accompanied by education and information programs.¹⁷

¹⁶ WCRF and AICR. Expert Report, *Food, Nutrition, Physical Activity and the Prevention of Cancer: a Global Perspective*. 2009; WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. Available at <http://www.dietandcancerreport.org/>

¹⁷ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.61 – 63.

8.1.2 General principles for front-of-pack scheme

The OPC supports the following principles in relation to FOPL (agreed to by a range of public health organisations at a forum hosted by the Australian Chronic Disease Prevention Alliance).

Public health organisations strongly believe that any FOPL system must have the following characteristics:

- Provide clear, simple, and easy to interpret information.
- Provide labelling information that is consistent across products and uniformly applied throughout Australia.
- Be consistent with broader public health objectives and existing health policies;
- Be able to be understood by most demographic groups, especially lower SES.
- Promote healthier food choices as well as highlight those foods that are a poorer choice or should be consumed as an occasional food only.
- Encourage the food industry to produce healthier food products.
- Be mandatory.
- Be strictly enforced and underpinned by appropriate sanctions to encourage industry compliance.
- Be closely monitored and evaluated against its specified goals and objectives.
- Be part of a broader framework for addressing obesity and chronic disease involving consumer education and policy and legislative initiatives.¹⁸

The OPC believes it is particularly important for any FOPL scheme to be mandatory. A voluntary scheme would be inadequate to achieve the aims of FOPL as food manufacturers would lack sufficient incentive to comply, and there would be no effective mechanisms for enforcement. Manufacturers could choose not to submit to such a scheme, and enforcement agencies could not take action in cases where signatories failed to comply. If a FOPL scheme is not comprehensively implemented nationally, the aims of a FOPL scheme are unlikely to be achieved.

The OPC does not believe market incentives would be a reliable mechanism for ensuring that manufacturers comply with a voluntary FOPL scheme, particularly where that scheme would require manufacturers to display 'negative' information (i.e. information demonstrating that a product is unhealthy overall or contains unhealthy levels of some nutrients). We do not believe companies would disclose nutrition information that consumers may perceive negatively if regulations did not require them to do so.

The introduction of a voluntary scheme, or allowing industry to develop its own FOPL scheme (or co-existing schemes) could lead to a variety of different schemes, and inconsistencies in the type and format of information displayed on front of packs. This would increase consumer confusion.

The inadequacies of a voluntary scheme have been demonstrated by the introduction of the percent daily intake scheme by some food manufacturers in Australia. There has been no published evidence that the %DI scheme has contributed to any of the aims of FOPL. The problems with this scheme are described below.

In our first submission, we noted our understanding that the Front of Pack Labelling Policy

¹⁸ Front of Pack Labelling: An Agreed Public Health Position – As agreed at a consensus forum hosted by the Australian Chronic Disease Prevention Alliance in Sydney on 23 February 2009, <<http://www.cancer.org.au/File/ACDPA/FOP-Labelling-Consensus-Statement-March.pdf>>.

Statement (Policy Statement) endorsed by the Ministerial Council¹⁹ has been provided to the panel and will be considered as part of this comprehensive review. As discussed, the OPC is pleased that this Policy Statement recognises the important role that a front-of-pack labelling system could play in promoting healthier food choices and increasing the healthiness of the food supply. However, the OPC has a number of concerns in relation to the Policy Statement, which we discussed in detail in section 6.2 of our first submission.

8.1.3 Problems with existing FOPL schemes

Percentage daily intake labelling

In 2006, the Australian Food and Grocery Council introduced a voluntary percentage daily intake (Percent DI) FOPL scheme, which is now used by a number of food manufacturers. Under the scheme, labels on the front of packs indicate the percentages of an average adult's recommended daily intake of various nutrients that product provides (based on an average adult's daily energy intake of 8700 kJ per day).

The OPC has significant concerns about this Percent DI scheme. We believe it is difficult to use and may confuse and mislead consumers (particularly parents and children) to make unhealthy food choices.

There is a lack of independent scientific research to support the effectiveness of Percent DI labelling, and objective studies conducted in Australia and overseas have found that consumers find Percent DI FOPL schemes and other similar schemes confusing and difficult to interpret.²⁰

A recent study conducted by a collaboration of public health groups in Australia (including the OPC) found that Percent DI schemes are not as well understood by consumers as interpretive labelling systems, such as traffic light labelling, which provide consumers with an interpretation of the healthiness of the product. This study also found that consumers from lower socio-economic groups have particular difficulty using the Percent DI scheme (but not other front-of-pack schemes, such as traffic lights).²¹

Our specific concerns about the current Percent DI scheme are as follows:

1. The scheme creates a potentially misleading impression that the Percent DI information applies to all persons

The Percent DI scheme is based on a recommended daily energy intake of 8,700 kilojoules. However, people's energy needs vary according to factors such as age, gender, weight, illness factors and activity levels. The Coalition is concerned that the scheme may lead some

¹⁹ Front of Pack Labelling Policy Statement, endorsed by Ministerial Council on 23 October 2009, <[http://www.health.gov.au/internet/main/publishing.nsf/Content/FF1FA0AAD23A3173CA2574E3001238A0/\\$File/Policy-Statement-Front-of-Pack-Labelling.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/FF1FA0AAD23A3173CA2574E3001238A0/$File/Policy-Statement-Front-of-Pack-Labelling.pdf)> at 6 November 2009.

²⁰ Cited in Regulation Standing Committee (2009) *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachment 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, New South Wales.

²¹ Kelly B, Hughes C, Chapman K, Louie J, Dixon H, King L. On behalf of a Collaboration of Public Health and Consumer Research Groups. *Front-of-Pack Food Labelling – Traffic light labelling gets the green light*. Cancer Council: Sydney 2008. Available at Kelly, B., Hughes, C., Chapman, K., Louie, J., Dixon, H., and King, L. (On behalf of a collaboration of public health and consumer research groups) (2008) *Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light*. Sydney: Cancer Council, <<http://www.cancerCouncil.com.au/editorial.asp?pageid=2456>>, at 21 January 2010.

people to underestimate the proportion of energy and nutrients particular foods contribute to their daily requirements, and to consume more than they require.

2. The scheme uses adult reference values on child-targeted products

The Percent DI scheme is often used on products aimed at children, despite the fact that the reference values are based on an average adult's recommended daily energy intake. For example, Percent DI labels appear on Uncle Toby's Roll-Ups, Kellogg's LCMS, and a range of children's breakfast cereals, including Coco Pops, Nutri-Grain, Froot Loops and Milo Cereal.

3. Percent DI is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes

Percent DI is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes. The daily intake for energy of 8700kJ is based on studies conducted in Australia and New Zealand in the 1990s that determined an average adult's actual energy consumption per day. The amount of 8700kJ does not reflect a 'recommended' daily intake of energy calculated in accordance with current Nutrient Reference Values or Recommended Dietary Intakes.²² It may also no longer reflect an average adult's actual energy consumption. We are also concerned that the recommended percent dietary intakes for fat, saturated fat, carbohydrates and sugar may no longer accurately reflect the best available scientific evidence. The Nutrient Reference Values for Australia and New Zealand were released in 2006 by the National Health and Medical Research Council (NHMRC) and replaced the previous Recommended Dietary Intakes. The NHMRC is also currently reviewing its Dietary Guidelines for Australian Adults 2003.

4. The scheme is based on variable serving sizes

The Percent DI scheme is based on arbitrary serving sizes. Percent DI values are based on the amount of energy provided by single servings of products, but the Percent DI scheme is based on arbitrary serving sizes. Serving sizes are determined by manufacturers and can vary considerably. This has the potential to mislead consumers in relation to the energy value and nutrition content of products containing multiple non-fixed serves, such as breakfast cereals, as manufacturers are able to base percent daily intake on smaller than realistic serving sizes for products higher in energy, fat, sugar and/or salt so that they appear to make a smaller contribution to recommended daily intakes.

5. The scheme uses inconsistent reference values

Under the scheme, manufacturers may choose to display Percent DI information for energy only (and not for any core nutrients) if label space is limited or the product is low in all core nutrients. For other products the preferred option is to display Percent DI information for fat, saturated fat, sugar and sodium, but this is 'optional'. This means that consumers relying on energy-only Percent DI labels may base food decisions solely on energy content. This should not be the sole criterion for food choices because products of low nutritional quality may have energy contents that are the same or lower than products of high nutritional quality (for example, a can of cola may contain fewer kilojoules than a carton of reduced-fat chocolate

²² Percent Daily Intake is required to be based on an average adult diet of 8700KJ pursuant to clause 7 of Standard 1.2.8 of the *Australia New Zealand Food Standards Code*. The average adult diet was determined by reference to the Australian National Nutrition Survey 1995 and the Life in New Zealand Survey 1991

milk and white bread may contain the same number of kilojoules as wholegrain bread).

6. The scheme does not distinguish between upper and lower limits of nutrients

The scheme does not distinguish between upper limits of nutrients, which consumers should aim to stay within (e.g. levels of fat, salt and sugar), and lower limits of nutrients, which consumers should aim to exceed (e.g. levels of fibre). The scheme may mislead consumers to believe it is necessary for good health to reach 'recommended' targets for particular nutrients, when in fact, consumers should try to minimise their intake. For example, only a limited amount of saturated fat should be consumed as part a healthy diet; however, the Percent DI system may imply that consumers should aim to consume the 'recommended' daily intake of saturated fat. (Signposts for fat, saturated fat, total sugars and sodium display small asterisks, linking to the statement 'moderate your intake' on the back of food packs. However, the asterisks and the statement are printed in tiny font and are barely visible to the naked eye.)

7. The scheme does not differentiate between intrinsic and extrinsic sugars

The Percent DI scheme combines and fails to differentiate between intrinsic (i.e. naturally occurring) sugars and non-milk extrinsic, otherwise known as 'free' or 'refined' (i.e. added sugars) sugars. The Dietary Guidelines for Australian Adults differentiate between 'intrinsic' and 'extrinsic' sugars and recommends that people limit their intake of extrinsic sugars.²³

The World Health Organization also differentiates between intrinsic and extrinsic sugars,²⁴ and recommends that free sugars should constitute no more than 10% of a person's daily energy requirements (or 50g for an average adult). This is almost half of the recommended dietary intake for all sugars currently displayed on Percent DI labels in Australia (18% of total energy and 90g for an average adult).

By combining added and natural sugar, the Percent DI scheme implies that consumers may consume 90g of extrinsic sugar per day, when in fact, they should be consuming no more than 50g per day.²⁵ For example, an apple would be represented as containing approximately 25% of an average adult's recommended daily intake of sugar, but an apple contains only intrinsic sugar and also contains other beneficial nutrients. An average "serving size" of Nutri-Grain is represented on the Percent DI label as containing 9.6g of sugar, and therefore 11% of an average adult's recommended dietary intake. However, Nutri-Grain only contains added sugar, which means it actually contains nearly 20% of an average adult's recommended daily intake of extrinsic sugar.

8. The Scheme does not provide interpretive guidance as to the healthiness of products

The scheme does not provide any interpretive guidance (e.g. colour coding) as to whether levels of energy and nutrients in the product are high, medium or low, and whether the product is a healthy choice overall. It is likely to be difficult for consumers to keep track of the

²³ Dietary Guidelines for Australian Adults, endorsed by the NHMRC, on 10 April 2003. p.172, <<http://www.nhmrc.gov.au/publications/synopses/files/n33.pdf>>.

²⁴ The term "free sugars" used by WHO refers to all monosaccharides and disaccharides added to foods by the manufacturer, cook or consumer, plus sugars naturally present in honey, syrups and fruit juices. See Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases (2002 : Geneva, Switzerland) Diet, nutrition and the prevention of chronic diseases: report of a joint WHO/FAO expert consultation, Geneva, 28 January -- 1 February 2002. Ch. 5, <http://www.who.int/nutrition/topics/5_population_nutrient/en/>.

²⁵ See StopGDA – Argument 7 – Sugar reference, <http://stopgda.eu/?page_id=21>.

proportion of the recommended daily intake of each nutrient they consume during the day, and ensure they do not exceed the recommended intake. As discussed above, research indicates that consumers find Percent DI schemes confusing and difficult to interpret, and not as easy to understand as interpretive schemes, such as traffic lights.

We have enclosed a paper by the UK National Heart Forum about Guideline Daily Amounts (the European labelling system on which the Percent DI scheme is based), which explains in detail the problems with that system in the UK.²⁶ Most of these problems are applicable to the Percent DI scheme.

We also direct you to the Stop GDA website at <http://stopgda.eu/>, which provides further information about the problems with Guideline Daily Amount labelling in Europe.

Endorsement schemes

A number of endorsement schemes for FOPL, developed by non-government organisations and the food industry, are also currently being used in Australia. These schemes include the 'Go Grains (4+ serves a day)' symbol, the National Heart Foundation's 'Tick' symbol and the Glycemic Index Foundation's 'GI symbol'. The OPC believes that these endorsements are not of themselves adequate to guide consumers towards healthier food choices. This is because they are voluntary and do not apply to all products as licensing fees preclude some companies from applying. The endorsements also take an "all or nothing" approach, whereby a product either carries an affirmative label or it does not; there is no opposing symbol to identify less healthy products. Endorsement schemes do not enable consumers to compare the healthiness of foods within and particularly across different food categories, and do not provide any means of identifying products that are unhealthy.

8.1.4 Recommended type of front-of-pack scheme – traffic light labels

The OPC strongly supports the introduction of an interpretative colour-coded "traffic light" FOPL scheme, using multiple traffic lights on the front of food packs to indicate levels (low, medium, high) of individual nutrients (fat, saturated fat, sugar and salt).

The scheme should be required on all products currently required to display a NIP.

Evidence of effectiveness of traffic light labels

As discussed in the OPC's first submission to the Review, evidence from Australia and overseas demonstrates that traffic light labelling schemes are easier to use and less confusing than non-interpretive schemes. Evidence suggests that a traffic light scheme would assist consumers from all demographic groups to make healthier food choices (including consumers from lower socio-economic and culturally/linguistically diverse groups).

Australian research

The Food Regulation Standing Committee Front-of-Pack Labelling Working Group recently reviewed the literature on consumer responses to FOPL. According to this review, a number of overseas studies have found that consumers respond favourably to interpretive traffic light colour

²⁶ Lobstein, T., Landon, J., & Lincoln, P. (2007) *Misconceptions and misinformation: the problems with Guideline Daily Amounts (GDAs)*, National Heart Forum: London.

coding of nutrient levels, and find it difficult to use non-interpretative labelling, such as labelling based on percentages and grams.²⁷

In 2008, a study of Australian consumers' attitudes and responses to FOPL was undertaken by a collaboration of Australian public health and consumer organisations, including the OPC. The study, involving 790 consumers across NSW, found that traffic light FOPL is significantly more effective in assisting consumers to select healthier food products when compared with other FOPL systems such as the Percent DI system. The study also found that traffic light FOPL leads to more accurate assessments of nutrient levels, and is easier and quicker to use than the other systems.²⁸

A recent study of the cost-effectiveness of obesity prevention policies concluded that traffic light labelling would be highly cost-effective as an obesity prevention measure, and have significant effects on the health of the population, including among the lower educated and less wealthy.²⁹ (This study has been provided as part of a separate submission to the Review from Gary Sacks. Please note that this study has not yet been published and is confidential.)

International research

The UK Food Standards Agency recommends the use of traffic light labels, based on its extensive consumer research in this area.³⁰ The most recent research undertaken for the UK Food Standards Agency (in May 2009) on the use and comprehension of different FOPL schemes in the UK found that the coexistence of a range of FOP labels in the UK market place creates considerable difficulty in comprehension for shoppers. The researchers suggested that standardising to a single, uniform label format would enhance use and comprehension of labels. The balance of evidence from the research suggested that the most useful FOPL for shoppers is a label combining text (the words low, medium and high), traffic light colours and Percent DI information.³¹ This study was discussed in more detail in the OPC's first submission to the Review.

A recent survey of the understanding and preferences of ethnically diverse consumers in New Zealand in relation to different nutrition labelling systems found that traffic light labels were preferred to Percent DI labels and NIPs, were best understood, and were most helpful for consumers in identifying healthier food choices, across all ethnic groups.³²

Another recent New Zealand study examined the effect of traffic light and Percent DI labels on

²⁷ Food Regulation Standing Committee 2009, *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachment 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, NSW, Australia.

²⁸ Kelly, B., Hughes, C., Chapman, K., Louie, J., Dixon, H., and King, L. (On behalf of a collaboration of public health and consumer research groups) (2008) *Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light*. Sydney: Cancer Council, <<http://www.cancercouncil.com.au/editorial.asp?pageid=2456>> at 21 January 2010.

²⁹ Sacks, G., Veerman, J.L., Moodie, M., & Swinburn, B. (2010) '“Traffic Light” nutrition labelling and “junk-food” tax: a modelled comparison of cost-effectiveness for obesity prevention', unpublished.

³⁰ Malam, S., Clegg, S., Kirwan, S. & McGinigal, S. (2009) *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*, London: UK Food Standards Agency, <<http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>> at 25 January 2010; UK Food Standards Agency (2005) *Qualitative signpost labelling refinement research*. London: Synovate; UK Food Standards Agency (2005) *Quantitative evaluation of alternative food signposting concepts*. London: Synovate; UK Food Standards Agency (2004) *Concept testing of alternative labelling of healthy/less healthy foods*. Gerrards Cross, England: Navigator.

³¹ Malam, S., Clegg, S., Kirwan, S. & McGinigal, S. (2009) *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*, London: UK Food Standards Agency, <<http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>> at 25 January 2010.

³² Gorton, D., Ni Mhurchu, C., Chen, M.H., & Dixon, R. (2009) 'Nutrition labels: a survey of use, understanding and preferences among ethnically diverse shoppers in New Zealand' *Public Health Nutrition*,

children's breakfast cereals on consumers' perceptions of the products' nutritional profiles. The study found that consumers shown cereals with traffic light labels were significantly more likely to identify products with poor nutritional profiles than consumers shown products with Percent DI labels or the NIP only, suggesting that traffic light labels are more effective in helping consumers to identify less healthy food choices.³³

Incidental benefits of traffic light labels

In addition to guiding consumers to healthier food choices, a front-of-pack traffic light labelling scheme would provide several incidental benefits.

A mandatory traffic light scheme would encourage food manufacturers to change the food supply through product reformulation. There is anecdotal evidence of this occurring since the introduction of a traffic light scheme in the UK.³⁴

A single, uniform traffic light scheme would also help prevent consumers from being misled by selective nutrition content claims if they continue to be permitted in relation to unhealthy foods (as traffic lights would highlight other unhealthy or less healthy characteristics of products) and would overcome consumer confusion created by the array of existing labelling schemes.

In addition, a traffic light scheme would be consistent with other Australian healthy eating initiatives that categorise foods according to traffic light colours, such as school canteen guidelines, and recently released draft healthy eating guidelines for food retail outlets in Victorian public hospitals. Children are learning to use traffic light labels colours in schools to identify healthy food choices; it would be very useful for them to be able to apply this learning when they begin to choose their own foods in the marketplace.

It would also assist GPs and other health professionals to direct patients with diet-related conditions, such as type 2 diabetes, hypertension and cardio-vascular disease, to appropriate food choices.³⁵

Public support for traffic light labels

As noted in the OPC's first submission to the Review, there is strong support in Australia for a single, uniform and mandatory FOPL scheme, and a traffic light scheme in particular. In 2008, the Centre for Behavioural Research in Cancer, Cancer Council Victoria, conducted a study to determine acceptability amongst the Australian community of public policy initiatives aimed at obesity prevention.

This study (of a random sample of 800 adult consumers who were the main grocery buyer in households across all Australian states) found that just over 9 in 10 consumers surveyed (91%) were in favour of the Government requiring food companies to provide colour-coded traffic light labelling on food packaging, with just over 2 in 3 (68%) being strongly in favour.

³³ Maubach, N., & Hoek, J. (2008) 'The effect of alternative nutrition information formats on consumers' evaluation of a children's breakfast cereal', Partnerships, Proof and Practice – International Nonprofit and Social Marketing Conference 2008 – Proceedings, University of Wollongong, 15-16 July, 2008, <<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1000&context=inism08>> at 30 April 2010.

³⁴ Cited in Regulation Standing Committee (2009) *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachments 2 and 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, New South Wales.

³⁵ Beard, T.C., Noswon, C.A., & Riley, M.D. (2007) 'Traffic-light food labels' *Medical Journal of Australia*, 186(1), 19, <http://www.mja.com.au/public/issues/186_01_010107/bea10962_letter_fm.html> at 7 May 2010.

Content and format of traffic light labels

At a minimum, the OPC recommends that traffic light labels should consist of a coloured signpost (red, orange or green) and text (low, medium or high) for each nutrient – fat, saturated fat, sugar and sodium. These are the key nutrients of which consumers need to reduce consumption in order to improve health outcomes.

Low, medium and high ranges of nutrients should be based on nutrition criteria developed by the Food Standards Agency in the UK. (Information about these criteria is available on the Food Standards Agency website at <http://www.food.gov.uk/multimedia/pdfs/frontofpackguidance2.pdf>.) These criteria should be reviewed and adapted as necessary to ensure their suitability for use in Australia.

The OPC recommends that consideration should also be given to requiring the following additional signposts as part of a front-of-pack labelling scheme:

1. Additional signpost for kilojoule content

The OPC recommends that consideration should be given to requiring an additional signpost indicating the kilojoule content of foods to be displayed on the front-of-packs, as kilojoule consumption is directly related to body weight. The kilojoule content in a serve of the product could appear as a number alongside traffic light labels. Consideration should also be given to the provision of interpretive guidance (e.g. through colour coding) as to whether kilojoule content is high, medium or low per 100g (i.e. level of energy density). Further work would be needed to determine appropriate ranges for such guidance.

Supportive consumer education would also need to be undertaken to improve understanding of the meaning and importance of kilojoule intake.

Further consumer research should be conducted as to whether inclusion of kilojoule content in a FOPL scheme would be useful and effective for guiding consumers to healthy food choices. .

2. Additional traffic light signpost for overall healthiness

The OPC also recommends that consideration should be given to use of an additional traffic light to indicate the overall healthiness of the food product, taking into account levels of beneficial and detrimental nutrients. This may assist consumers to weigh up the importance of different nutrients – including beneficial and detrimental nutrients – when choosing between products, and may help them to make healthier choices, particularly when comparing products across food categories.

Overall ratings for products could be based on nutrient profile scoring criteria, developed by the UK Food Standards Agency and adapted for use in Australia by FSANZ as qualifying criteria for health claims (under the proposed new health claims standard *Proposal P293 for Nutrition, Health and Related Claims*). Further work would be needed to adapt these criteria for use as the basis for overall traffic light signposts.

Further research should be conducted to determine whether an overall traffic light would assist consumers to choose healthy products.

3. Additional traffic light signposts for beneficial nutrients

The OPC suggests that consideration should be given to requiring additional traffic light signposts for certain beneficial nutrients, such as fibre and calcium, to avoid misclassification of some products. Particular signposts could be required across all foods or only in relation to certain food groups. For example, traffic light signposts for detrimental nutrients only would suggest that wholegrain bread is less healthy than white bread, and that muesli is less healthy than a lower fibre cereal, without inclusion of a signpost for fibre. Therefore, it may be appropriate for a fibre signpost to be required in relation to breads, cereals, rice, pasta and noodles.

4. Additional signposts for amounts of nutrients in products

In addition, consideration should be given to use of a number alongside the traffic light signposts indicating either: (a) the amount (in g/ml) of the nutrient per serve; or (b) the proportion of the nutrient (i.e. per 100g/ml) in the product. Further research should be conducted to determine whether this would assist consumers to choose healthy products, and whether a number based on serve or 100g/ml of a product would be most effective.

If a number based on the amount of nutrients in a serve of a product were used, serving sizes for food packages containing multiple non-fixed serves of a product (e.g. breakfast cereal packs) would need to be appropriately regulated so that they could not be manipulated by manufacturers to make nutrient values appear lower.

For example, serving sizes could be regulated in the following way:

- For food packages containing multiple non-fixed serves of a product, nutrient values could be based on standard serving sizes, which could be developed for different food categories.
- For food products consisting of one fixed serve or multiple fixed serves, nutrient values could be based on that fixed serving size.
- A food package should be considered to contain one fixed serve or multiple fixed serves if it would reasonably be expected that the whole single serve or the whole of each multiple serve would be consumed at once (i.e. in a single sitting) after purchasing or opening.

In developing a suitable traffic light scheme for use in Australia, consideration may need to be given to use of different criteria for different food groups, which take into account the nutritional composition of foods in that group. This may help avoid misclassification of foods and encourage product reformulation. Thought may also need to be given to whether added sugar rather than total sugar levels should be displayed in a traffic light signpost. This may be necessary to prevent products with high fruit content and dairy products with high levels of intrinsic sugars from appearing less healthy than foods that are lower in total sugar but higher in added sugar.

8.1.5 Need for consumer research, education and evaluation

As noted above, further consumer research should be undertaken to determine which traffic light labelling signposts and format would be most effective to guide consumers to healthier food choices.

It will be crucial for any FOPL scheme to be accompanied by extensive consumer education to promote understanding and use of front-of-pack labels.

Any FOPL scheme would also need to be rigorously evaluated and regularly reviewed to ensure its continued effectiveness in Australia.

8.2 Nutrition labelling of menus in fast food outlets

The OPC strongly recommends the introduction of nutrition information labelling on fast food menus. Fast food outlets should be required to display nutrition information about each product on menus and menu boards at the point of sale, and on labels on assisted service cabinets and bars. This is discussed in detail below in section 27.1 of this submission.

8.3 Nutrition labelling of vending machines

The OPC also strongly recommends traffic light nutrition labelling of food and beverage vending machines. This is discussed in section 27.2 below.

8.4 Nutrition labelling of menus in food retail outlets in public institutions

The OPC strongly supports the introduction of nutrition information labelling on menus and menu boards in food retail outlets in public institutions. The OPC recommends that the same menu labelling requirements apply in food retail outlets in public institutions as in fast food outlets. This is discussed in section 27.3 below.

8.5 Nutrition information disclosure in food advertisements

The OPC recommends the introduction of requirements for nutrition information with interpretive guidance (e.g. traffic light signposts) to be provided in food advertisements. This is discussed in section 28 below.

8.6 Improved regulation of nutrition content claims

As discussed above in section 3 of this submission, it is very common for food manufacturers to make marketing claims about certain nutritional benefits of a product on food packaging and/or in advertising (such as “high in calcium” or “low in fat”) to create the impression that a product is a healthy choice, while failing to disclose with equal prominence other nutritional characteristics of the product which make it unhealthy overall, for example, that the product is high in sugar, salt or saturated fat.

The review panel would be aware that under the *FSANZ Proposal P293 for Nutrition, Health and Related Claims*, nutrient profile criteria will apply to high-level and general-level health claims, but will not apply to nutrition content claims about foods. This is of serious concern to the OPC because it means that selective nutrition content claims, which may create the impression that foods are healthy or good for consumers, will continue to be made about unhealthy foods. The OPC believes that the making of such claims about unhealthy food affects consumers’ ability to make informed choices about foods they buy and eat, is likely to mislead consumers, and drives unhealthy food choices.

Consumer research has shown that nutrition content claims may induce positive biases towards products, including ‘halo effects’ (where consumers rate the product higher on other health attributes not mentioned in the claim) and ‘magic bullet effects’ (where consumers attribute

inappropriate health benefits to the product).³⁶

Many consumers would reasonably expect that if claims are made about nutritional characteristics or health benefits of a product, the product is healthy overall, and would not be aware of the need to read the nutrition information panel to establish the healthiness of the product. Consumer research indicates that consumers have difficulty interpreting and understanding nutrition information panels and that many consumers use nutrition content claims as the basis for their food choices.³⁷

The OPC does not believe there is any sound rationale for distinguishing between nutrition content claims and general level health claims in terms of the application of nutrient profiling criteria. The OPC is not aware of any evidence that general level health claims have a different influence on consumer behaviour than nutrition content claims. Indeed, a literature review undertaken by Williams (2005) concluded that a common finding of studies on nutrition and health claims is that 'consumers do not make clear distinctions between nutrition content claims, structure-function claims and health claims.'³⁸ It is unlikely that consumers would be aware of the distinction between nutrition content claims and health claims, and understand that only foods making health claims must comply with general health criteria, while foods making nutrition content claims may in fact be unhealthy overall. The OPC is concerned that many consumers would reasonably assume all foods making nutrition or health claims must meet general health criteria.

There is a clear need for improved regulation of nutrition content claims.

The OPC recommends that the Food Standards Code should provide for the application of nutrient profile eligibility criteria to nutrition content claims as well as health claims, so that nutrition content claims cannot be made about foods that fail to meet nutrient profile criteria. (Information about nutrient profile eligibility criteria is available on the Food Standards Australia New Zealand website at <http://www.foodstandards.gov.au/foodstandards/proposals/proposalp293nutritionhealthandrelatedclaims/index.cfm>.)

The OPC believes this would be the best approach for regulating nutrition content claims. There is no justification for allowing such claims to be made about foods that are unhealthy overall, and it is misleading for these products to be marketed on the basis of health or nutrition benefits. Consumers who wish to attain a health or nutrition benefit from a food product should not be encouraged to consume products that fail to meet nutrient profile criteria.

Alternatively, if nutrition content claims are not subject to nutrient profile criteria and/or a traffic light FOPL system is not introduced, the OPC would recommend the introduction of a requirement for prominent disclosure of the levels of fat, saturated fat, sugar or salt on the front of food packaging and in advertising where a nutrition content claim is made and the product contains a high or medium level of any of these nutrients. This is discussed further in section 10 below.

³⁶ Roe, B., Levy, A.S., & Derby, B.M. (1999) 'The impact of health claims on consumer search and product evaluation outcomes: results from FDA experimental data' *Journal of Public Policy and Marketing*, 18(1), 89-105; Andrews, J.C., Netemeyer, R.G., & Burton, S. (1998) 'Consumer generalization of nutrient content claims in advertising' *Journal of Marketing*, 62, 62-75

³⁷ Donovan Research, Food Labelling Issues - Consumer Qualitative Research Report, commissioned by Australia New Zealand Food Authority (now FSANZ), December 2001.

³⁸ Williams, P.G. (2005) 'Communicating health benefits – do we need health claims?' *The Australian Journal of Dairy Technology*, 60(2), 2005, 193-195.

The OPC notes that introduction of traffic light labels would also help to overcome any misleading impressions or confusion created by nutrition content claims. This would ensure consumers would be made aware of the characteristics of the product that are less healthy or unhealthy and would be better able to assess the overall healthiness of the product, without having to consult the nutrition information panel.

9. In what ways can disclosure of ingredients be improved?

The OPC recommends that the Food Standards Code should be amended to require proper disclosure of trans fat content, palm oil content and sugar content of foods on food labels.

9.1 Trans fat content

The Food Standards Code does not require nutrition information labels to include information about trans fat content, unless nutrition content claims are made about cholesterol, saturated or unsaturated fat or trans-fatty acids. This is despite the fact that consumption of trans fat has been associated with many serious health effects. It is a major risk factor for cardiovascular disease, with consumption of as little as 5 grams daily having been shown to increase the risk of ischaemic heart disease by 25%.³⁹

The failure of current food regulation to require disclosure of trans fat content on nutrition information labels means that consumers are unable to make informed choices to avoid or limit consumption of foods containing trans fat. Food regulation should require all nutrition information panels to highlight information about trans fat content.

9.2 Sugar content

Currently, it is difficult for consumers to interpret from product ingredient lists whether or not sugar is the main or a main ingredient of a product because sugar may be a component of different ingredients that are listed separately or because what is essentially sugar may be labelled as other things, such as glucose, honey, corn syrup or high-fructose corn syrup.

To address this, the OPC recommends that the listing of sugar in the ingredients list for a product should represent a combination of all the different types of sugar in the product from all of its different sources, so that the listing of ingredients in order of proportion is based on the total sugar content of the product. Specific types of sugars should be listed in brackets following the overall sugar listing to inform consumers with allergies or intolerances to particular sugars.

However, it should be noted that the need for an overall sugar listing in the ingredients list would be reduced if front-of-pack labels on products were required to highlight high levels of sugar.

9.3 Palm oil content

Currently, manufacturers are permitted to list palm oil as 'vegetable oil' in the ingredients lists of products. The OPC believes consumers should be informed if a product contains palm oil, as it

³⁹ Oomen, C.M., Ocke, M.C., Feskens, E.J. , et al. (2001) Association between trans fatty acid intake and 10-year risk of coronary heart disease in the Zutphen Elderly Study: a prospective population-based study. *Lancet*, 357; 746-751.

is very high in saturated fat. Accordingly, the OPC recommends that the Food Standards Code should be amended to require palm oil to be labelled as palm oil rather than vegetable oil in the ingredients lists of products.

10. To what extent should health claims that can be objectively supported by evidence be permitted?

As the review panel would know, FSANZ's *Proposal P293 for Nutrition, Health and Related Claims* proposes to introduce a new standard to the Food Standards Code that will permit health claims to be made on food labels and in food advertising in Australia and New Zealand.

The OPC has some concerns about this proposal. It believes the impetus for the proposal was industry desire to use health claims as marketing tools, rather than consumer demand. The OPC is concerned that there is a lack of evidence that health claims will assist consumers to make healthy food choices and have a positive impact on public health, and a risk that health claims will undermine nutrition education, and confuse and mislead consumers.

Health claims will be made mainly in relation to processed foods because fresh foods are not usually packaged, and because processed foods are generally marketed more heavily than fresh foods. Therefore, the OPC is concerned that health claims have the potential to increase consumption of processed foods, and displace consumption of fresh foods, by consumers trying to make healthy food choices.

The OPC is also concerned about the potential for health claims to 'medicalise' food by promoting consumer understanding that individual foods can provide medicine-like benefits for disease prevention. This is unrealistic and contrary to public health and nutrition principles in relation to the importance of total diet for disease prevention. This may also lead to people consuming processed foods that have been fortified with vitamins or minerals which are claimed to provide a health benefit, rather than fresh foods in which the vitamins or minerals are naturally present.

If health claims are permitted, they must be subject to strict regulatory safeguards, particularly requirements for rigorous scientific substantiation, and eligibility criteria to ensure claims can only be made about foods with suitable nutrient profiles, and do not encourage consumer choices that may have adverse health impacts. In particular, we believe it is imperative that high-level health claims are subject to regulations requiring pre-approval and scientific substantiation. We are strongly opposed to self-regulation of general-level and high-level health claims.

If health claims are permitted, the OPC supports the framework developed by FSANZ for regulating general-level and high-level health claims (as described in FSANZ's *Proposal P293 for Nutrition, Health and Related Claims Final Assessment Proposal*).

However, as discussed in section 8.6 above, the OPC believes nutrition content claims should also be subject to nutrient profile qualifying criteria under the proposed new standard, so that such claims cannot be made about unhealthy foods.

12. Should specific health warnings (e.g., high level of sodium or saturated fat per serve) and related health consequences be required?

As discussed above, the OPC believes the best approach to regulating nutrition content claims would be for such claims to be subject to nutrient profile eligibility criteria so that they cannot be

made about foods that are unhealthy overall.

The OPC recommends that rather than health warnings, more important and effective labelling interventions to support public health objectives would be introduction of a front-of-pack traffic light labelling scheme, and improved regulation of nutrition content claims to make such claims subject to nutrient profile criteria, as discussed above. The OPC recommends that these interventions should be the current priorities for food labelling regulation and policy, and the focus of the work of the Review Panel and further research.

However, the OPC would, in principle, support consideration being given to the use of specific nutrition disclosure statements, and considers that there are two possible applications of such statements:

First, as an alternative to applying nutrient profile qualifying criteria to nutrition content claims, consideration could be given to requiring prominent disclosure of the levels of detrimental nutrients (e.g. saturated fat, sugar, salt, trans fats) on the front of food packaging and in advertising where a nutrition content claim is made and the product contains a high level of any of these nutrients. Such a requirement may have the effect of discouraging manufacturers from making nutrition content claims about products containing high levels of detrimental nutrients.

For example, a high sugar breakfast cereal displaying a nutrition content claim could be required to display a statement, such as “This product contains a high level of sugar”, in prominent lettering on the front of the cereal pack, and the statement could be required to appear in any advertising for the product (in writing and/or verbally, depending on the advertising format).

Second, products with more than certain levels of detrimental nutrients (e.g. saturated fat, sugar, sodium, trans fats or palm oil) could be required to prominently disclose the levels of these nutrients (on packaging and/or in advertising).

If health claims about food products are to be permitted, it is arguable that a commensurate requirement would be for products with high levels of detrimental nutrients to carry warning statements about this. It is likely that this would have the effect of encouraging food companies to reformulate products to reduce levels of detrimental nutrients. Different criteria would need to be developed for different food categories.

As noted above, introduction of traffic light labels would help to overcome any misleading impressions or confusion created by nutrition content claims, and would help to alert consumers to high levels of fat, saturated fat, sugar or sodium in products. Therefore, the introduction of traffic light labelling would, to a large extent, obviate the need for such nutrient disclosure statements, and would, in the OPC’s view, be a more useful and effective intervention.

However, such statements may be an intervention worthy of consideration if nutrition content claims are not subject to nutrient profile eligibility criteria and if a traffic light labelling system is not introduced.

Extensive consumer research and testing would need to be conducted on the impact and effectiveness of such statements, the form they should take and criteria that should be used, if implementation were to be considered.

The OPC supports the introduction of requirements for mandatory health warnings on alcohol products, and endorses the submissions of the Alcohol Policy Coalition on this issue.

17. Is there a need to establish agreed definitions of terms such as ‘natural’, ‘lite’, ‘organic’, ‘free range’, ‘virgin’ (as regards olive oil), ‘kosher’ or ‘halal’? If so, should these definitions be included or referenced in the Food Standards Code?

The OPC is concerned about the misuse of terms, such as ‘natural’, ‘lite’ and ‘organic’, to create the impression that products are healthy or healthier than other products. The OPC believes these terms have a similar effect on consumers’ perceptions about products as health and nutrition content claims (discussed above), and is likely to encourage consumption of products by consumers trying to make healthy choices. However, as with nutrition content claims, the OPC believes these terms are commonly used to market products that are not healthy overall.

The OPC believes there is a need for definitions of these terms to be included or referenced in the Food Standards Code - to enable direct enforcement of the Code in cases of non-compliance with the definitions and/or enforcement action under the misleading and deceptive conduct provisions of the *Trade Practices Act 1974* and/or state and territory fair trading legislation.

In particular, the OPC believes a definition of the terms ‘lite’ and ‘light’ needs to be included in the Food Standards Code, which restricts use of the terms to products that are low in fat (e.g. less than 3%) and low in energy, as these terms are likely to be understood by consumers in this way.

Currently under the self-regulatory Code of Practice on Nutrient Claims, ‘lite’ is not defined, but the Code states that the characteristic which makes the food ‘light’ must be stated on the label, and if it refers to a nutrient or energy, it must comply with the conditions for a ‘low’ or ‘reduced’ claim (e.g. for fat, low means no more than 3% fat; and reduced means no more than 75% of fat content of same quantity of reference food). However, as noted above, non-compliance with this requirement has been found to be high, and the OPC is concerned that consumers may interpret ‘light’ or ‘lite’ claims used in relation to low fat products as meaning low in energy, when often this is not the case.

In addition, terms such as ‘lite’ and ‘light’ when used about nutrients or energy are nutrition content claims, and should be subject to nutrient profile qualifying criteria, as discussed above.

The OPC notes that introduction of front-of-pack traffic light labels would help to overcome the potential for terms such as ‘natural’ and ‘organic’ to mislead or confuse consumers about the healthiness of foods.

20. Should alcohol products be regulated as a food? If so, should alcohol products have the same labelling requirements as other foods (i.e., nutrition panels and list of ingredients)? If not, how should alcohol products be regulated?

The OPC believes that the same requirements for nutrition information panels and ingredients lists should apply to alcohol products as food products. Consumers have the right to information about the nutritional content of products they purchase, and this is even more the case in relation to alcohol products, which may pose serious risks to health. Nutrition information

labelling on alcohol products would help educate consumers that alcohol products contain high levels of kilojoules and sugar, and may contribute to weight gain, and may encourage consumers to limit their alcohol intake. Consumers with allergies or specific dietary needs may have particular needs for ingredient and nutrition information.

In addition, the OPC believes that health and nutrition claims (e.g. 'low carb') in relation to alcohol products should be entirely prohibited on alcohol labels and in alcohol advertising. As discussed above, research shows that these claims may induce positive biases towards products. When made in relation to alcohol products, the OPC believes they are likely to lead consumers to underestimate the health detriment caused by drinking, and may influence consumers to drink more. The OPC does not believe that alcohol products, which may be harmful to health, should be allowed to be marketed on the basis of health or nutrition benefits.

The OPC supports the submissions of the Alcohol Policy Coalition on these issues.

PART 4: FOOD LABELLING PRESENTATION

21. Should minimum font sizes be specified for all wording?

The OPC recommends that minimum font sizes should be specified for all nutrition information required on food packaging under the Food Standards Code to ensure that the information is legible by the majority of consumers, including those with sight problems, and that it is sufficiently prominent in relation to other information and images presented on packaging. A minimum font size of 8 is recommended. However, consideration should be given to size requirements being scaled according to the size of food packages.

In addition to font size, the Food Standards Code should prescribe requirements as to colour and background colour and positioning of the information to ensure that the information is sufficiently prominent, and that packages cannot be designed by manufactures to detract attention from required information.

Consumer testing should be conducted to determine how the size, colour and positioning of information should be regulated to maximise readability and ensure sufficient prominence of the information.

23. How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?

The OPC acknowledges that there is a finite amount of information that can be provided on food labels, and appreciates the need to balance the right of consumers to information against the quantity and complexity of information that can be taken in, as noted in the Issues Consultation Paper.

The OPC believes front-of-pack traffic light labels provide an effective means of presenting nutrition information in a simple and clear format that is easy for consumers to understand at a glance, and that balances the rights of consumers to information against avoidance of information overload.

Introduction of a single, uniform traffic light labelling scheme presented in a standard format would ensure provision of the most useful nutrition information to consumers on the front of pack, and would help prevent problems with information overload. With appropriate education campaigns, consumers would understand that traffic light labels contain information provided by government that they can rely on, and would become accustomed to using traffic lights to obtain the nutritional information they need to assess and compare products. Consumers seeking more detailed nutrition information could continue to consult the NIP.

As discussed in section 8.1 above, Australian and international research suggests that traffic light front-of-pack labels are better understood and more effective in assisting consumers to select healthier food products than other front-of-pack labelling systems, such as Percent DI labelling.

The OPC believes the provision of interpretive guidance is particularly important for providing context to nutritional information and helping consumers to understand how healthy products are overall. In particular, the OPC believes colour-coded traffic light signposts would help consumers with literacy and numeracy difficulties, and consumers from low SES or linguistically diverse backgrounds, to interpret nutrition information.

If traffic light labelling or any other mandatory labelling scheme is introduced, it will be important to ensure its effectiveness is not undermined by other conflicting information on food packaging and in advertising. Manufacturers should also be prevented from using other FOPL labelling schemes involving health- or nutrition-related pictorial icons, such as the Percent Daily Intake scheme, and health- and nutrition-related claims should be subject to nutrient profile qualifying criteria, as discussed in sections 8.5 and 25 of this submission

In addition, regulations should be designed to ensure any FOPL scheme is sufficiently clear and prominent, in terms of size, colour and boldness, so that it is immediately obvious to consumers and stands out from other information and images on the package, and so that packages cannot be designed by manufacturers to detract attention from compulsory labels.

We also recommend that requirements for the mandatory NIP be retained, but that the format of the NIP be improved so that it is more readily understandable by consumers. This is discussed above in section 2. For ease of reference, we have summarised our proposals for improving the format of the NIP below.

- The NIP should highlight levels of kilojoules, saturated fat, sugar and salt, as well as levels of certain beneficial nutrients, such as fibre, per 100g of the product (in large, bold and/or coloured font – see CSPI example).
- If a colour-coded front-of-pack labelling system is not introduced (see discussion of this proposal in the OPC's first submission to the Review and in section 8.1 above), the NIP should also indicate whether levels of kilojoules, saturated fat, sugar and salt, and beneficial nutrients, such as fibre, per 100g of the product are high, medium or low (e.g. using traffic light colours).
- The NIP should display and highlight information about the trans fat content of products (in large, bold and/or coloured font). (This is discussed in section 9.1 above.)

In addition, to avoid the possibility of manufacturers manipulating serving sizes to artificially lower nutritional values in the NIP, the OPC recommends that consideration should be given to regulating serving sizes as proposed in section 8.1 below in relation to traffic light labelling.

We direct the Review Panel to a document outlining proposals by the US Center for Science in the Public Interest (CSPI) for improving the content and format of the NIP in the US, which is included as an appendix to this submission.

24. In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels?

As discussed throughout this submission, the OPC recommends that extensive consumer education programs should accompany the introduction of any new food labelling requirements such as front-of-pack labelling and menu labelling.

For example, strategies should be developed to educate consumers about:

- what red, orange and green traffic light colours mean and what ranges are used to determine traffic light ratings;
- how consumers should use traffic lights to select healthy products;
- the impact of consuming products with red traffic light signposts, and the importance of choosing products with green signposts; and
- the meaning of kilojoules, the kilojoule needs of different groups of consumers, and the

consequences of under- and over-consuming kilojoules.

Research and evaluation would be needed to develop appropriate education messages and strategies, and to ensure information is understood in the way intended.

In addition, if traffic light labelling is introduced, the OPC recommends that the backs of food packages should be required to display descriptions of the ranges used in traffic light labelling (e.g. ranges for high, medium and low nutrient levels), and any other statements that may be required to give context to the information, for example, statements about the energy requirements of adults (male/female), and children.

This information should also be required to be displayed on menus and menu boards in fast food outlets and food retail outlets in public institutions, and on signs on vending machines, if relevant labelling requirements are introduced.

For example, in the US, section 4205 of the federal Patient Protection and Affordable Care Act requires fast food menus to display a statement about daily caloric intake designed to help the public understand the significance of calorie information on the menu in the context of a total daily diet. (The form of this statement will be prescribed by regulations.)

Consideration should also be given to requiring more detailed information to be displayed in supermarkets and stores (e.g. on posters or boards) explaining how labelling systems operate, for example, the meaning of traffic light colours and the ranges used.

25. What is an appropriate role for government in relation to use of pictorial icons on food labels?

In recent years, there has been a proliferation of pictorial icons on the front of food packages to indicate attributes of products relating, for example, to health, nutrition, production methods, sustainability, environmental impact, country of origin and animal welfare. These include pictorial icons used as part of not-for-profit endorsement schemes, such as the National Heart Foundation's 'Tick' symbol, and pictorial icons used by food manufacturers to market products, such as ticks appearing next to nutrition content claims.

As noted above, there is a finite amount of information on food packaging that consumers can absorb. The OPC is concerned that the number of different health- and nutrition-related pictorial icons appearing on product packaging has the potential to cause information overload and confusion amongst consumers, and could undermine the effectiveness of any front-of-pack nutrition-labelling scheme that is introduced.

Health and nutrition-related pictorial icons developed by food manufacturers are likely to have the same effects on consumers as health and nutrition content claims (see discussion of these claims in section 8.5 above). In some cases, they may be more effective to market products as consumers may falsely assume they indicate independent endorsement of products. The OPC is concerned that these icons are commonly used to market products that are not healthy choices overall, and would undermine the public health objectives of any front-of-pack nutrition information labelling system that is introduced.

The OPC also has concerns about some health and nutrition-related pictorial icons used as part of not-for-profit endorsement schemes. As discussed in section 8.1.3 above, endorsement schemes

do not enable consumers to compare the healthiness of all foods within and particularly across different food categories, and do not provide any means of identifying products that are unhealthy.

In addition, endorsement icons are likely to be even more influential than health and nutrition content claims as endorsement by an independent organisation creates consumer confidence in products and is likely to have significant halo effects, and many consumers rely on endorsement icons to identify healthy products. However, icons used as part of some endorsement schemes (e.g. the Heart Foundation tick) are used on products that are not necessarily healthy choices overall, but may be healthier or less unhealthy than other products within a particular food category. The OPC is concerned that the distinction between 'healthy' and 'healthier' choices is not well understood by consumers, that many consumers would assume that endorsed products are 'healthy' in absolute terms, and that endorsement of 'healthier' or 'less unhealthy' products may lead consumers to over-consume these products. In addition, standards/criteria used in some endorsement schemes are not subject to public consultation, and information about standards/criteria is not always publicly available.⁴⁰

The OPC believes that government regulation of the use of pictorial icons that suggest a health or nutrition benefit is required to ensure that consumers are not misled or confused by use of these icons on foods that are not healthy overall, and to ensure that the effectiveness of any front-of-pack labelling system is not undermined. Specifically, the OPC recommends that health- and nutrition-related pictorial icons developed by food manufacturers should not be permitted, and that health- and nutrition-related endorsement schemes developed by not-for-profit organisations should require approval by FSANZ (to ensure appropriate and transparent standards and criteria), and should be subject to nutrient profile qualifying criteria. If a front-of-pack labelling scheme were introduced, consideration would need to be given to the utility of including further pictorial icons on the front-of-pack. In the OPC's view, it would be preferable for all nutrition information to be incorporated in a single standardised scheme.

At a minimum, the OPC recommends that all health- and nutrition-related pictorial icons should be subject to nutrient profile qualifying criteria so that they cannot be displayed on food products that are not healthy choices overall.

(Under FSANZ's *Proposal P293 for Nutrition, Health and Related Claims*, only pictorial icons that meet the definition of a health claim would be subject to nutrient profile qualifying criteria, and pictorial icons used as part of endorsement schemes would be excluded from the proposed standard altogether.)

26. What objectives should inform decisions relevant to the format of front-of-pack labelling?

26.1 Objectives of front-of-pack labelling

In the OPC's view, the primary objectives of any FOPL system should be to:

- a) properly inform consumers about the healthiness and nutritional properties of products; and
- b) protect and promote public health by promoting healthier food choices, and deterring consumption of unhealthy foods.

⁴⁰ Clemons, R. (2010) *Food Endorsement Programs*, Choice, <<http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Labelling-and-advertising/Sustainability/Food-endorsement-programs/page/Introduction.aspx>> at 3 May 2010.

A secondary objective of FOPL should be to encourage industry to reformulate/develop healthier products.

As part of meeting the primary objectives set out above, the aims of any FOPL system should be to:

- effectively communicate nutritional information;
- help consumers understand what nutrition information means;
- enable consumers to readily and effectively compare products on the basis of health and nutrition (within and across food categories); and
- enable consumers to readily and effectively identify unhealthy and healthy food products.

To achieve these objectives, any FOPL system would need to:

- apply universally and be consistent in format across all food products;
- be presented in a clear and simple format, that can be quickly absorbed and readily understood by consumers from all demographic groups;
- provide nutritional information that is useful for consumers and relevant to the healthiness of products;
- provide interpretative and contextual guidance as to the nutritional content and healthiness of products (i.e. low, medium and high ranges), so that consumers are able to understand how healthy a product is without a high level of prior knowledge and understanding of nutrition; and
- be presented in a format that encourages consumers to choose healthy products.

For the reasons discussed in section 8.1 above, the OPC believes that traffic light labels in the format recommended in section 8.1.4, would be the best FOPL scheme to achieve these aims.

For ease of reference, our submissions with respect to the format of front-of-pack labelling are repeated below.

26.2 Format of front-of-pack labels – traffic light scheme

The OPC strongly supports the introduction of an interpretative colour-coded “traffic light” FOPL scheme, using multiple traffic lights on the front of food packs to indicate levels (low, medium, high) of individual nutrients (fat, saturated fat, sugar and salt).

The scheme should be required on all products currently required to display a NIP.

Evidence of effectiveness of traffic light labels

As discussed in the OPC’s first submission to the Review, evidence from Australia and overseas demonstrates that traffic light labelling schemes are easier to use and less confusing than non-interpretive schemes. Evidence suggests that a traffic light scheme would assist consumers from all demographic groups to make healthier food choices (including consumers from lower socio-economic and culturally/linguistically diverse groups).

Australian research

The Food Regulation Standing Committee Front-of-Pack Labelling Working Group recently reviewed the literature on consumer responses to FOPL. According to this review, a number of overseas studies have found that consumers respond favourably to interpretive traffic light colour coding of nutrient levels, and find it difficult to use non-interpretive labelling, such as labelling

based on percentages and grams.⁴¹

In 2008, a study of Australian consumers' attitudes and responses to FOPL was undertaken by a collaboration of Australian public health and consumer organisations, including the OPC. The study, involving 790 consumers across NSW, found that traffic light FOPL is significantly more effective in assisting consumers to select healthier food products when compared with other FOPL systems such as the Percent DI system. The study also found that traffic light FOPL leads to more accurate assessments of nutrient levels, and is easier and quicker to use than the other systems.⁴²

A recent study of the cost-effectiveness of obesity prevention policies concluded that traffic light labelling would be highly cost-effective as an obesity prevention measure, and have significant effects on the health of the population, including among the lower educated and less wealthy.⁴³ (This study has been provided as part of a separate submission to the Review from Gary Sacks. Please note that this study has not yet been published and is confidential.)

International research

The UK Food Standards Agency recommends the use of traffic light labels, based on its extensive consumer research in this area.⁴⁴ The most recent research undertaken for the UK Food Standards Agency (in May 2009) on the use and comprehension of different FOPL schemes in the UK found that the coexistence of a range of FOP labels in the UK market place creates considerable difficulty in comprehension for shoppers. The researchers suggested that standardising to a single, uniform label format would enhance use and comprehension of labels. The balance of evidence from the research suggested that the most useful FOPL for shoppers is a label combining text (the words low, medium and high), traffic light colours and Percent DI information.⁴⁵ This study was discussed in more detail in the OPC's first submission to the Review.

A recent survey of the understanding and preferences of ethnically diverse consumers in New Zealand in relation to different nutrition labelling systems found that traffic light labels were preferred to Percent DI labels and NIPs, were best understood, and were most helpful for consumers in identifying healthier food choices, across all ethnic groups.⁴⁶

Another recent New Zealand study examined the effect of traffic light and Percent DI labels on children's breakfast cereals on consumers' perceptions of the products' nutritional profiles. The

⁴¹ Food Regulation Standing Committee 2009, *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachment 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, NSW, Australia.

⁴² Kelly, B., Hughes, C., Chapman, K., Louie, J., Dixon, H., and King, L. (On behalf of a collaboration of public health and consumer research groups) (2008) *Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light*. Sydney: Cancer Council, <<http://www.cancercouncil.com.au/editorial.asp?pageid=2456>> at 21 January 2010.

⁴³ Sacks, G., Veerman, J.L., Moodie, M., & Swinburn, B. (2010) '“Traffic Light” nutrition labelling and “junk-food” tax: a modelled comparison of cost-effectiveness for obesity prevention', unpublished.

⁴⁴ Malam, S., Clegg, S., Kirwan, S. & McGinigal, S. (2009) *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*, London: UK Food Standards Agency, <<http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>> at 25 January 2010; UK Food Standards Agency (2005) *Qualitative signpost labelling refinement research*. London: Synovate; UK Food Standards Agency (2005) *Quantitative evaluation of alternative food signposting concepts*. London: Synovate; UK Food Standards Agency (2004) *Concept testing of alternative labelling of healthy/less healthy foods*. Gerrards Cross, England: Navigator.

⁴⁵ Malam, S., Clegg, S., Kirwan, S. & McGinigal, S. (2009) *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*, London: UK Food Standards Agency, <<http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>> at 25 January 2010.

⁴⁶ Gorton, D., Ni Mhurchu, C., Chen, M.H., & Dixon, R. (2009) 'Nutrition labels: a survey of use, understanding and preferences among ethnically diverse shoppers in New Zealand' *Public Health Nutrition*,

study found that consumers shown cereals with traffic light labels were significantly more likely to identify products with poor nutritional profiles than consumers shown products with Percent DI labels or the NIP only, suggesting that traffic light labels are more effective in helping consumers to identify less healthy food choices.⁴⁷

Incidental benefits of traffic light labels

In addition to guiding consumers to healthier food choices, a front-of-pack traffic light labelling scheme would provide several incidental benefits.

A mandatory traffic light scheme would encourage food manufacturers to change the food supply through product reformulation. There is anecdotal evidence of this occurring since the introduction of a traffic light scheme in the UK.⁴⁸

A single, uniform traffic light scheme would also help prevent consumers from being misled by selective nutrition content claims if they continue to be permitted in relation to unhealthy foods (as traffic lights would highlight other unhealthy or less healthy characteristics of products) and would overcome consumer confusion created by the array of existing labelling schemes.

In addition, a traffic light scheme would be consistent with other Australian healthy eating initiatives that categorise foods according to traffic light colours, such as school canteen guidelines, and recently released draft healthy eating guidelines for food retail outlets in Victorian public hospitals. Children are learning to use traffic light labels colours in schools to identify healthy food choices; it would be very useful for them to be able to apply this learning when they begin to choose their own foods in the marketplace.

It would also assist GPs and other health professionals to direct patients with diet-related conditions, such as type 2 diabetes, hypertension and cardio-vascular disease, to appropriate food choices.⁴⁹

Public support for traffic light labels

As noted in the OPC's first submission to the Review, there is strong support in Australia for a single, uniform and mandatory FOPL scheme, and a traffic light scheme in particular. In 2008, the Centre for Behavioural Research in Cancer, Cancer Council Victoria, conducted a study to determine acceptability amongst the Australian community of public policy initiatives aimed at obesity prevention.

This study (of a random sample of 800 adult consumers who were the main grocery buyer in households across all Australian states) found that just over 9 in 10 consumers surveyed (91%) were in favour of the Government requiring food companies to provide colour-coded traffic light labelling on food packaging, with just over 2 in 3 (68%) being strongly in favour.

⁴⁷ Maubach, N., & Hoek, J. (2008) 'The effect of alternative nutrition information formats on consumers' evaluation of a children's breakfast cereal', Partnerships, Proof and Practice – International Nonprofit and Social Marketing Conference 2008 – Proceedings, University of Wollongong, 15-16 July, 2008, <<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1000&context=inism08>> at 30 April 2010.

⁴⁸ Cited in Regulation Standing Committee (2009) *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachments 2 and 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, New South Wales.

⁴⁹ Beard, T.C., Noswon, C.A., & Riley, M.D. (2007) 'Traffic-light food labels' *Medical Journal of Australia*, 186(1), 19, <http://www.mja.com.au/public/issues/186_01_010107/bea10962_letter_fm.html> at 7 May 2010.

Content and format of traffic light labels

At a minimum, the OPC recommends that traffic light labels should consist of a coloured signpost (red, orange or green) and text (low, medium or high) for each nutrient – fat, saturated fat, sugar and sodium. These are the key nutrients of which consumers need to reduce consumption in order to improve health outcomes.

Low, medium and high ranges of nutrients should be based on nutrition criteria developed by the Food Standards Agency in the UK. (Information about these criteria is available on the Food Standards Agency website at <http://www.food.gov.uk/multimedia/pdfs/frontofpackguidance2.pdf>.) These criteria should be reviewed and adapted as necessary to ensure their suitability for use in Australia.

The OPC recommends that consideration should also be given to requiring the following additional signposts as part of a front-of-pack labelling scheme:

5. Additional signpost for kilojoule content

The OPC recommends that consideration should be given to requiring an additional signpost indicating the kilojoule content of foods to be displayed on the front-of-packs, as kilojoule consumption is directly related to body weight. The kilojoule content in a serve of the product could appear as a number alongside traffic light labels. Consideration should also be given to the provision of interpretive guidance (e.g. through colour coding) as to whether kilojoule content is high, medium or low per 100g (i.e. level of energy density). Further work would be needed to determine appropriate ranges for such guidance.

Supportive consumer education would also need to be undertaken to improve understanding of the meaning and importance of kilojoule intake.

Further consumer research should be conducted as to whether inclusion of kilojoule content in a FOPL scheme would be useful and effective for guiding consumers to healthy food choices. .

6. Additional traffic light signpost for overall healthiness

The OPC also recommends that consideration should be given to use of an additional traffic light to indicate the overall healthiness of the food product, taking into account levels of beneficial and detrimental nutrients. This may assist consumers to weigh up the importance of different nutrients – including beneficial and detrimental nutrients – when choosing between products, and may help them to make healthier choices, particularly when comparing products across food categories.

Overall ratings for products could be based on nutrient profile scoring criteria, developed by the UK Food Standards Agency and adapted for use in Australia by FSANZ as qualifying criteria for health claims (under the proposed new health claims standard *Proposal P293 for Nutrition, Health and Related Claims*). Further work would be needed to adapt these criteria for use as the basis for overall traffic light signposts.

Further research should be conducted to determine whether an overall traffic light would assist consumers to choose healthy products.

7. Additional traffic light signposts for beneficial nutrients

The OPC suggests that consideration should be given to requiring additional traffic light signposts for certain beneficial nutrients, such as fibre and calcium, to avoid misclassification of some products. Particular signposts could be required across all foods or only in relation to certain food groups. For example, traffic light signposts for detrimental nutrients only would suggest that wholegrain bread is less healthy than white bread, and that muesli is less healthy than a lower fibre cereal, without inclusion of a signpost for fibre. Therefore, it may be appropriate for a fibre signpost to be required in relation to breads, cereals, rice, pasta and noodles.

8. Additional signposts for amounts of nutrients in products

In addition, consideration should be given to use of a number alongside the traffic light signposts indicating either: (a) the amount (in g/ml) of the nutrient per serve; or (b) the proportion of the nutrient (i.e. per 100g/ml) in the product. Further research should be conducted to determine whether this would assist consumers to choose healthy products, and whether a number based on serve or 100g/ml of a product would be most effective.

If a number based on the amount of nutrients in a serve of a product were used, serving sizes for food packages containing multiple non-fixed serves of a product (e.g. breakfast cereal packs) would need to be appropriately regulated so that they could not be manipulated by manufacturers to make nutrient values appear lower.

For example, serving sizes could be regulated in the following way:

- For food packages containing multiple non-fixed serves of a product, nutrient values could be based on standard serving sizes, which could be developed for different food categories.
- For food products consisting of one fixed serve or multiple fixed serves, nutrient values could be based on that fixed serving size.
- A food package should be considered to contain one fixed serve or multiple fixed serves if it would reasonably be expected that the whole single serve or the whole of each multiple serve would be consumed at once (i.e. in a single sitting) after purchasing or opening.

In developing a suitable traffic light scheme for use in Australia, consideration may need to be given to use of different criteria for different food groups, which take into account the nutritional composition of foods in that group. This may help avoid misclassification of foods and encourage product reformulation. Thought may also need to be given to whether added sugar rather than total sugar levels should be displayed in a traffic light signpost. This may be necessary to prevent products with high fruit content and dairy products with high levels of intrinsic sugars from appearing less healthy than foods that are lower in total sugar but higher in added sugar.

26.3 Problems with existing front-of-pack labelling schemes

Percentage daily intake labelling

The OPC has significant concerns about the Australian Food and Grocery Council's Percent DI scheme. We believe it is difficult to use and may confuse and mislead consumers (particularly parents and children) to make unhealthy food choices.

There is a lack of independent scientific research to support the effectiveness of Percent DI

labelling, and objective studies conducted in Australia and overseas have found that consumers find Percent DI FOPL schemes and other similar schemes confusing and difficult to interpret.⁵⁰

A recent study conducted by a collaboration of public health groups in Australia (including the OPC) found that Percent DI schemes are not as well understood by consumers as interpretive labelling systems, such as traffic light labelling, which provide consumers with an interpretation of the healthiness of the product. This study also found that consumers from lower socio-economic groups have particular difficulty using the Percent DI scheme (but not other front-of-pack schemes, such as traffic lights).⁵¹

Our specific concerns about the current Percent DI scheme are as follows:

1. The scheme creates a potentially misleading impression that the Percent DI information applies to all persons

The Percent DI scheme is based on a recommended daily energy intake of 8,700 kilojoules. However, people's energy needs vary according to factors such as age, gender, weight, illness factors and activity levels. The Coalition is concerned that the scheme may lead some people to underestimate the proportion of energy and nutrients particular foods contribute to their daily requirements, and to consume more than they require.

2. The scheme uses adult reference values on child-targeted products

The Percent DI scheme is often used on products aimed at children, despite the fact that the reference values are based on an average adult's recommended daily energy intake. For example, Percent DI labels appear on Uncle Toby's Roll-Ups, Kellogg's LCMS, and a range of children's breakfast cereals, including Coco Pops, Nutri-Grain, Froot Loops and Milo Cereal.

3. Percent DI is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes

Percent DI is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes. The daily intake for energy of 8700kJ is based on studies conducted in Australia and New Zealand in the 1990s that determined an average adult's actual energy consumption per day. The amount of 8700kJ does not reflect a 'recommended' daily intake of energy calculated in accordance with current Nutrient Reference Values or Recommended Dietary Intakes.⁵² It may also no longer reflect an average adult's actual energy consumption. We are also concerned that the recommended percent dietary intakes for fat, saturated fat, carbohydrates and sugar may no longer accurately reflect the best available scientific evidence. The Nutrient Reference Values for Australia and New Zealand were released in 2006 by the National Health and Medical Research Council (NHMRC) and

⁵⁰ Cited in Regulation Standing Committee (2009) *Consultation Paper for a Front of Pack Labelling Policy Guideline*, Attachment 3. Produced for the Food Regulation Standing Committee by the 2009 Food Regulation Standing Committee Working Group to develop a Policy Guideline on Front of Pack Labelling, New South Wales.

⁵¹ Kelly B, Hughes C, Chapman K, Louie J, Dixon H, King L. On behalf of a Collaboration of Public Health and Consumer Research Groups. *Front-of-Pack Food Labelling – Traffic light labelling gets the green light*. Cancer Council: Sydney 2008. Available at Kelly, B., Hughes, C., Chapman, K., Louie, J., Dixon, H., and King, L. (On behalf of a collaboration of public health and consumer research groups) (2008) *Front-of-Pack Food Labelling: Traffic Light Labelling Gets the Green Light*. Sydney: Cancer Council, <<http://www.cancercouncil.com.au/editorial.asp?pageid=2456>>, at 21 January 2010.

⁵² Percent Daily Intake is required to be based on an average adult diet of 8700KJ pursuant to clause 7 of Standard 1.2.8 of the *Australia New Zealand Food Standards Code*. The average adult diet was determined by reference to the Australian National Nutrition Survey 1995 and the Life in New Zealand Survey 1991

replaced the previous Recommended Dietary Intakes. The NHMRC is also currently reviewing its Dietary Guidelines for Australian Adults 2003.

4. The scheme is based on variable serving sizes

The Percent DI scheme is based on arbitrary serving sizes. Percent DI values are based on the amount of energy provided by single servings of products, but the Percent DI scheme is based on arbitrary serving sizes. Serving sizes are determined by manufacturers and can vary considerably. This has the potential to mislead consumers in relation to the energy value and nutrition content of products containing multiple non-fixed serves, such as breakfast cereals, as manufacturers are able to base percent daily intake on smaller than realistic serving sizes for products higher in energy, fat, sugar and/or salt so that they appear to make a smaller contribution to recommended daily intakes.

5. The scheme uses inconsistent reference values

Under the scheme, manufacturers may choose to display Percent DI information for energy only (and not for any core nutrients) if label space is limited or the product is low in all core nutrients. For other products the preferred option is to display Percent DI information for fat, saturated fat, sugar and sodium, but this is 'optional'. This means that consumers relying on energy-only Percent DI labels may base food decisions solely on energy content. This should not be the sole criterion for food choices because products of low nutritional quality may have energy contents that are the same or lower than products of high nutritional quality (for example, a can of cola may contain fewer kilojoules than a carton of reduced-fat chocolate milk and white bread may contain the same number of kilojoules as wholegrain bread).

6. The scheme does not distinguish between upper and lower limits of nutrients

The scheme does not distinguish between upper limits of nutrients, which consumers should aim to stay within (e.g. levels of fat, salt and sugar), and lower limits of nutrients, which consumers should aim to exceed (e.g. levels of fibre). The scheme may mislead consumers to believe it is necessary for good health to reach 'recommended' targets for particular nutrients, when in fact, consumers should try to minimise their intake. For example, only a limited amount of saturated fat should be consumed as part a healthy diet; however, the Percent DI system may imply that consumers should aim to consume the 'recommended' daily intake of saturated fat. (Signposts for fat, saturated fat, total sugars and sodium display small asterisks, linking to the statement 'moderate your intake' on the back of food packs. However, the asterisks and the statement are printed in tiny font and are barely visible to the naked eye.)

7. The scheme does not differentiate between intrinsic and extrinsic sugars

The Percent DI scheme combines and fails to differentiate between intrinsic (i.e. naturally occurring) sugars and non-milk extrinsic, otherwise known as 'free' or 'refined' (i.e. added sugars) sugars. The Dietary Guidelines for Australian Adults differentiate between 'intrinsic' and 'extrinsic' sugars and recommends that people limit their intake of extrinsic sugars.⁵³

The World Health Organization also differentiates between intrinsic and extrinsic sugars,⁵⁴ and

⁵³ Dietary Guidelines for Australian Adults, endorsed by the NHMRC, on 10 April 2003. p.172, <<http://www.nhmrc.gov.au/publications/synopses/files/n33.pdf>>.

⁵⁴ The term "free sugars" used by WHO refers to all monosaccharides and disaccharides added to foods by the

recommends that free sugars should constitute no more than 10% of a person's daily energy requirements (or 50g for an average adult). This is almost half of the recommended dietary intake for all sugars currently displayed on Percent DI labels in Australia (18% of total energy and 90g for an average adult).

By combining added and natural sugar, the Percent DI scheme implies that consumers may consume 90g of extrinsic sugar per day, when in fact, they should be consuming no more than 50g per day.⁵⁵ For example, an apple would be represented as containing approximately 25% of an average adult's recommended daily intake of sugar, but an apple contains only intrinsic sugar and also contains other beneficial nutrients. An average "serving size" of Nutri-Grain is represented on the Percent DI label as containing 9.6g of sugar, and therefore 11% of an average adult's recommended dietary intake. However, Nutri-Grain only contains added sugar, which means it actually contains nearly 20% of an average adult's recommended daily intake of extrinsic sugar.

8. The Scheme does not provide interpretive guidance as to the healthiness of products

The scheme does not provide any interpretive guidance (e.g. colour coding) as to whether levels of energy and nutrients in the product are high, medium or low, and whether the product is a healthy choice overall. It is likely to be difficult for consumers to keep track of the proportion of the recommended daily intake of each nutrient they consume during the day, and ensure they do not exceed the recommended intake. As discussed above, research indicates that consumers find Percent DI schemes confusing and difficult to interpret, and not as easy to understand as interpretive schemes, such as traffic lights.

We have enclosed a paper by the UK National Heart Forum about Guideline Daily Amounts (the European labelling system on which the Percent DI scheme is based), which explains in detail the problems with that system in the UK.⁵⁶ Most of these problems are applicable to the Percent DI scheme.

We also direct you to the Stop GDA website at <http://stopgda.eu/>, which provides further information about the problems with Guideline Daily Amount labelling in Europe.

Endorsement schemes

A number of endorsement schemes for FOPL, developed by non-government organisations and the food industry, are also currently being used in Australia. These schemes include the 'Go Grains (4+ serves a day)' symbol, the National Heart Foundation's 'Tick' symbol and the Glycemic Index Foundation's 'GI symbol'. The OPC believes that these endorsements are not of themselves adequate to guide consumers towards healthier food choices. This is because they are voluntary and do not apply to all products as licensing fees preclude some companies from applying. The endorsements also take an "all or nothing" approach, whereby a product either carries an affirmative label or it does not; there is no opposing symbol to identify less healthy products. Endorsement schemes do not enable consumers to compare the healthiness of foods within and particularly

manufacturer, cook or consumer, plus sugars naturally present in honey, syrups and fruit juices. See Joint WHO/FAO Expert Consultation on Diet, Nutrition and the Prevention of Chronic Diseases (2002 : Geneva, Switzerland) Diet, nutrition and the prevention of chronic diseases: report of a joint WHO/FAO expert consultation, Geneva, 28 January -- 1 February 2002. Ch. 5, <http://www.who.int/nutrition/topics/5_population_nutrient/en/>.

⁵⁵ See StopGDA – Argument 7 – Sugar reference, <http://stopgda.eu/?page_id=21>.

⁵⁶ Lobstein, T., Landon, J., & Lincoln, P. (2007) *Misconceptions and misinformation: the problems with Guideline Daily Amounts (GDAs)*, National Heart Forum: London.

across different food categories, and do not provide any means of identifying products that are unhealthy.

27. What is the case for food label information to be provided on foods prepared and consumed in commercial (e.g., restaurants, take away shops) or institutional (schools, pre-schools, worksites) premises? If there is a case, what information would be considered essential?

27.1 Menu labelling in fast food outlets

As noted above, the OPC strongly recommends the introduction of requirements for nutrition information labelling on fast food menus. Fast food outlets should be required to display nutrition information about each product on menus and menu boards at the point of sale and on tags next to assisted or self-service cabinets or bars (e.g. salad bars).

As discussed in section 6 above, currently under Standard 1.2.1 of the Food Standards Code, food that is made and packaged on the premises from which it is sold or packaged in the presence of the purchaser is largely exempt from the food labelling requirements in the Code and does not have to bear a nutrition information panel. This largely exempts fast food from ingredient labelling and nutrition information requirements

Fast food outlets are major contributors to unhealthy diets in Australia. The Australian fast food market has grown rapidly over the last decade. In 2007, approximately 1.64 billion fast food or take away meals were served by nearly 17,000 fast food outlets in Australia, which made up 44% of all meals served in the commercial food service sector.⁵⁷ Fast food chains and takeaway outlets are the most popular place for buying a meal or snack, particularly for families with children under 18,⁵⁸ and forty-four cents from every dollar spent on food and drink is spent on fast food.⁵⁹

US Research has found that most people substantially underestimate the energy content of restaurant food, and high caloric restaurant food in particular,⁶⁰ and a number of US studies have suggested a strong correlation between eating in restaurants, excess caloric intake, and increases in US obesity rates.⁶¹

In light of the amount of fast food that is consumed in Australia, and the fact that it is often high in fat, saturated fat, sugar and/or sodium, of poor nutritional quality and sold in large serving sizes, consumers need to be provided with appropriate nutrition information about fast food.

The OPC believes that fast food menu labelling would help to educate consumers about the nutritional composition of fast food, encourage consumers to choose healthier options in fast

⁵⁷ BIS Shrapnel. (2009) *Proposal: Fast Food in Australia, 2009*, BIS Shrapnel Pty Ltd, <http://www.bis.com.au/verve/_resources/Fast_Food_in_Australia_09_Proposal.pdf> at 30 April 2010.

⁵⁸ BIS Shrapnel. Foodservice Report. May/June 2003.

⁵⁹ 'Cash strapped customers flock to fast food outlets', *The Australian*, 16 February 2009, <<http://www.theaustralian.com.au/business/news/for-fast-food-the-eat-goes-on/story-e6frg90f-1111118859617>>, at 30 April 2010.

⁶⁰ Berman M and Lavizzo-Mourey R. Obesity prevention in the information age. Caloric information at the point of purchase. *Journal of the American Medical Association* (2008) 300:433-5, <<http://jama.ama-assn.org/cgi/content/full/300/4/433>>.

⁶¹ See studies cited in Armstrong, K. (2008) *Menu Labeling Legislation: Options for Requiring the Disclosure of Nutritional Information in Restaurants*, Minnesota: Tobacco Law Center, <<http://www.publichealthlawcenter.org/topics/healthy-eating/menu-labeling-legislation>> at 30 April 2010.

food restaurants and/or reduce their consumption of fast food overall, encourage fast food chains to reformulate products, and, as part of a multi-strategy approach, help to reduce population levels of overweight and obesity.

In the US, legislation requiring fast food outlets to display calorie and/or other nutritional information on menus has been in place for some time in a number of US states, cities and counties, including New York City,⁶² and section 4205 of the recently enacted federal Patient Protection and Affordable Care Act requires fast food restaurants to disclose calorie information on menu boards, and to make other nutritional information (total calories, calories from fat, and levels of fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fibre and protein) available on the premises in written form on request. The requirements will apply to chain restaurants consisting of 20 or more outlets nationally doing business under the same name.⁶³

A consumer survey undertaken in New York City has indicated that the calorie information on menus has resulted in fast food customers purchasing food with fewer calories.⁶⁴ Similarly, an experimental study conducted in the US in February this year on the impact of nutrition labelling on fast food menus on parents' food choices for children found that parents presented with menu labelling ordered an average of 102 fewer calories for children than parents who did not have menu labelling.⁶⁵

There is strong public support for nutrition labelling of menus in fast food outlets. A recent study conducted by the Centre for Behavioural Research in Cancer, Cancer Council Victoria (described in section 8.1 above) found that more than eight in ten consumers surveyed were in favour of food and drink chains listing nutritional information on menu boards (62% were strongly in favour). More than eight in ten consumers were also in favour of displaying this information using colour-coded traffic light labelling (58% were strongly in favour).⁶⁶

The OPC does not believe introduction of menu labelling requirements would impose an unreasonable regulatory burden on industry. Requirements would only apply to fast food restaurant chains with standardised menu items, most of which would already analyse the nutritional content of their products and many of which already provide nutritional information on websites or in brochures (e.g. McDonalds). The cost of changing menus and/or menu boards would not be significant for such outlets, particularly relative to their total marketing expenditures.

27.1.1 Content of menu labelling

The OPC recommends that fast food outlets should be required to display nutrition information signposts with interpretive guidance for all products. These signposts should be displayed next to all standard menu items on menus and menu boards that are clearly visible at the point of sale, and on tags next to assisted or self-service cabinets or bars (e.g. salad bars, self-service buffets or cafeterias).

⁶² See <<http://www.nyc.gov/html/doh/html/pr2008/pr008-08.shtml>>.

⁶³ See <http://dpc.senate.gov/dpcdoc-sen_health_care_bill.cfm>.

⁶⁴ 'New York study says menu labelling affects behaviour', *Reuters*, <<http://www.reuters.com/article/idUSTRE59P4O720091026?pageNumber=1&virtualBrandChannel=11604>>, at 22 January 2010.

⁶⁵ Tandon, P.S., Wright, J., Zhou, C., Rogers, C.B., & Christakis, D.A. (2010) 'Nutrition menu labeling may lead to lower-calorie restaurant meal choices for children' *Pediatrics*, 125(2), 244-248.

⁶⁶ Morley B, Martin J and Dixon H (Centre for Behavioural Research in Cancer, Cancer Council Victoria), Confidential Internal Memorandum - Obesity Prevention Policy Initiatives: Consumer acceptability. Prepared for Obesity Policy Coalition. December 2008.

There are a number of forms that nutrition information signposts on fast food menus and menu boards could take, as outlined below:

1. Multiple traffic light signposts

The OPC's preferred option would be for menus, menu boards and assisted- or self-service tags to be required to display colour-coded traffic light signposts to indicate the levels of key individual nutrients – fat, saturated fat, sugar and sodium – in each menu item or product.

Nutrition criteria developed by the UK Food Standards Agency could be used as the basis for determining appropriate ranges for levels of nutrients, as discussed above in section 8.1 in relation to front-of-pack traffic light labelling. These criteria would need to be reviewed and adapted for use in fast food outlets in Australia, and the criteria used for fast food labelling may need to differ from those for front-of-pack labelling.

As with front-of-pack traffic light labelling, consideration may also need to be given to requiring additional traffic light signposts for certain beneficial nutrients, such as fibre.

We acknowledge that there may be issues with multiple traffic light signposts overcrowding menus, but we think these issues could be overcome with appropriately designed and formatted menus.

However, consideration should also be given to the following menu labelling options, which would be less likely to result in menu overcrowding.

2. Single traffic light signpost

Menus, menu boards and tags could be required to display a single traffic light signpost providing an overall rating of the nutritional profile or healthiness of each menu item or product (as discussed in relation to front-of-pack labelling in section 8.1 above)

3. Kilojoule content signpost with interpretive guidance

Menus, menu boards and tags could be required to display signposts indicating the number of kilojoules in each menu item.

If the kilojoule content of products were to be labelled, consideration would need to be given to requiring provision of interpretive guidance to help place this information in context and aid consumer understanding of kilojoules.

This interpretive guidance should take the form of labelling of whether kilojoule content is high, medium, or low, based on minimum energy requirements (e.g. using traffic light colour coding or text). However, further work would be required to determine appropriate kilojoule ranges, and these may need to differ depending on factors such as the type of product, whether it is directed to children, and whether it is intended to be eaten as a snack or a meal.

4. Single traffic light signpost and kilojoule content signpost

A fourth option would be for menus, menu boards and tags to be required to display a single traffic light signpost as discussed above, along with a kilojoule content signpost for each menu

item or product. The combination of these signposts may be preferable to use of either signposts alone, as the provision of kilojoule content may help consumers discriminate between different products with the same overall rating, and the traffic light signpost may help place kilojoule content information in context.

Further research should be undertaken as to which nutrition information labels on fast food menus and menu boards would be most useful for consumers and most effective to guide them towards healthier food choices.

Consideration would also need to be given to how fast food menu meals or product combinations should be labelled and the criteria used. It may be necessary to require menus and menu boards to display nutrition information labels for each individual component of the fast food menu or bundle to avoid fast food outlets being able to use product combinations to manipulate traffic light ratings to make products appear to be healthier than they are, for example, combining unhealthy products, such as hamburgers, with healthier or healthy products such as bottles of water or salads, to produce more favourable overall traffic light ratings.

Introduction of menu labelling should be accompanied by extensive consumer education programs and social marketing campaigns to promote understanding and use of nutrition information displayed on menus. The effectiveness of menu labelling would also need to be subject to ongoing evaluation and review.

27.1.2 Which fast food outlets should be required to display menu labelling?

An appropriate definition of 'fast food outlet' should be developed, which should be modelled on the following definitions used in US menu labelling legislation:

Section 4205 of the Patient Protection and Affordable Care Act:

'A restaurant or similar retail food establishment that is part of a chain with 20 or more locations doing business under the same name (regardless of the type of ownership of the locations) and offering for sale substantially the same menu items...'

Section 81.50 of the New York City Health Code:

'A food service establishment is one of a group of fifteen or more food service establishments doing business nationally, offering for sale substantially the same menu items, in servings that are standardised for portion size and content, that operate under common ownership or control, or as franchised outlets of a parent business, or do business under the same name.'

The OPC recommends that the definition of fast food outlet in Australia should be based on chains of ten or more retail food outlets, given Australia's smaller population size. This would ensure small, locally owned food businesses were excluded from menu labelling requirements.

27.2 Vending machines

The OPC recommends that consideration should be given to introduction of requirements for nutrition information labelling of food and beverage vending machines.

Food and beverage vending machines are pervasive. They are particularly common in public

places, and institutions such as workplaces, hospitals, schools and universities, and food sold in vending machines tends to be high in fat, sugar and/or kilojoules. Often consumers buy products from vending machines when their food choices are restricted, and there are no or limited alternatives. In these situations, it is particularly important that consumers are provided with the information they need to decide between the products on offer.

Currently consumers are unable to consult the nutrition information on food packaging prior to purchasing a product from a vending machine. If front-of-pack nutrition information labelling were introduced, nutrition information on product packaging may be visible by some consumers in some vending machines, depending on how machines are designed; but even if visible, it is unlikely that this information would be sufficiently prominent to attract the attention of consumers or influence their food choices. In the OPC's view, consumers need nutrition information about products to be prominently displayed on the outside of vending machines to enable them to make informed choices prior to purchase, and to help them identify the healthiest options. Nutrition information labelling on vending machines may encourage consumers to choose healthier options or avoid food sold in vending machines altogether.

The need for vending machine labelling has recently been recognised in the US. Under section 4205 of the recently enacted Patient Protection and Affordable Care Act, vending machine operators are required to provide a sign disclosing the number of calories in each product in proximity to each food product or the selection button. The requirement applies to any food vending machine operator with 20 or more vending machines.

In Australia, the OPC would recommend that food vending machine operators with more than a certain number of vending machines (e.g. 20) should be required to display a prominent sign with traffic light signposts to indicate the levels of key individual nutrients – fat, saturated fat, sugar and sodium in each product sold in the machine. As with front-of-pack and fast food menu labelling, consideration should also be given to requiring additional signposts for kilojoule content, beneficial nutrients, such as fibre, and an overall nutritional rating.

The OPC does not believe requiring nutrition labelling on vending machines would impose unreasonable burdens on vending machine operators. Products stocked in vending machines would already be required to display nutrition information on packaging, so complying with the requirements would be a matter of transferring this information to a sign or label displayed on the outside of vending machines. Signs or labels could be designed to be readily amendable in case of changes to products stocked in machines.

Research would need to be conducted as to the most effective labelling format to inform consumers and encourage healthier food choices, and consumer education and ongoing evaluation would be required.

27.3 Food retail outlets in public institutions

As noted above, the OPC recommends that all food retail outlets in public institutions (including public hospitals, universities, schools, prisons and government-owned workplaces) should be subject to the same nutrition labelling requirements as fast food outlets, that is, they should be required to display traffic light signposts on menus and menu boards at the point of sale indicating the level of individual nutrients – fat, saturated fat, sugar and sodium – in each menu item. As with fast food menu labelling, consideration should also be given to requiring menus and menu boards to display signposts for kilojoule content, beneficial nutrients, such as fibre, and overall nutritional

ratings.

Clear and informative nutrition information labelling is particularly important in food outlets in public institutions, as typically a large number of people consume food from outlets in these institutions (e.g. in hospitals, food is consumed by staff, visitors and patients) and consumers eating in these institutions tend to be captive audiences with limited food choices available. Therefore, it is important that consumers are provided with nutrition information to enable them to make informed decisions about the food they eat, and to help them identify, and encourage them to choose, the healthiest options available. It is also very important for public institutions to set examples of good practice to the broader community through clear and informative nutrition information labelling.

This is particularly the case in schools and hospitals and other health service institutions. As institutions responsible for the health outcomes of patients, hospitals are important settings for health promotion, and have the capacity to influence people's attitudes and behaviour. Good nutrition is an important component of holistic healthcare. As such, hospitals need to provide an environment to patients, visitors and staff that supports and encourages healthy food choices, and that acts as a model to the wider community.

Nutrition labelling of food sold in schools is also needed to help educate children about the healthiness and nutritional properties of foods, to help children become accustomed to choosing food on the basis of nutrition labelling, and to guide children towards healthy options. Similar to hospitals, schools are important settings for educating and influencing children, and for modelling health-promoting behaviour to children and the wider community.

Nutrition information labelling in public institutions would complement and support other healthy eating initiatives in these institutions. For example, healthy eating guidelines and policies for food retail outlets in hospitals and school canteens have been introduced in a number of states.

The OPC notes that nutrition information labelling in public institutions is one area in which it may be appropriate to consider approaches other than formal government regulation. For example, an effective approach may be for governments to develop nutrition labelling guidelines, and for food retail outlets' locations within public institutions to be conditional upon compliance with the guidelines.

As with other labelling interventions, consumer education and ongoing evaluation would be required.

28. To what degree should the Food Standards Code address food advertising?

The OPC strongly supports much stricter regulation of advertising of unhealthy food, in particular, comprehensive regulation of unhealthy food advertising that is directed to children.

However, the OPC understands that question 28 is directed to the extent to which food-labelling requirements in the Food Standards Code should flow through to food advertising, and that broader issues relating to regulation of food advertising generally are beyond the scope of this review.

The OPC's concerns in relation to the link between food labelling and food advertising relate to:

- a) the regulation of health and nutrition content claims in food advertising; and
- b) the provision of interpretive guidance in food advertising, similar to colour-coded food labelling, to help consumers understand the healthiness of advertised products and to guide

consumers towards healthy choices.

28.1 Health and nutrition content claims

The OPC's concerns in relation to health and nutrition content claims are discussed in sections 8.5 and 10 above. These concerns, and research in relation to the effects of these claims, apply equally to claims made in food advertising.

Accordingly, the OPC makes the same recommendations for regulating these claims in food advertising:

- the OPC recommends that nutrition content claims should be subject to nutrient profile qualifying criteria so that they cannot be made in advertisements for foods that do not healthy nutritional profiles (as proposed in relation to health claims under *Proposal P293 for Nutrition, Health and Related Claims*);
- alternatively, the OPC would recommend requiring prominent disclosure of the levels of fat, saturated fat, sugar or salt in food advertising where a nutrition content claim is made and the product contains a high or medium level of any of these nutrients.

The OPC notes that provision of nutrition information with interpretive guidance in food advertisements (e.g. through traffic light signposts) may help overcome misleading impressions or confusion caused by nutrition content claims.

28.2 Nutrition information disclosure

Similar methods are used in food advertising as on food packaging to promote products as being healthy, nutritionally beneficial and good choices as part of a healthy lifestyle. For example, food advertisements commonly feature pictures of fresh fruit and vegetables, natural outdoor settings, healthy-looking, slim actors – often engaging in physical activity, endorsements by sports personalities, and claims about the nutritional content or natural properties of foods. This advertising skews consumer preferences, and in the OPC's view, may mislead or confuse consumers as to the health and nutritional benefits of food products.

Accordingly, the OPC believes there is a similar need for nutrition information with interpretive guidance (e.g. traffic light signposts) to be provided in food advertisements to inform and educate consumers about the healthiness and nutritional properties of advertised products, to help overcome any misleading impressions or confusion created by advertisements, and to encourage consumers to choose and consume healthier products.

For example, in television advertising, this could take the form of a banner on the bottom of the screen displaying traffic light signposts, and in print advertising, this could take the form of the same traffic light panel as used on food packaging.

(The OPC's recommendations in relation to traffic light labelling are discussed in detail in section 8.1 above.)

We note that disclosure of nutrition information in food advertising may, to some extent, decrease the need for improved regulation of nutrition content claims in food advertising, as discussed in section 28.2 above.

PART 5: ADMINISTERING AND ENFORCING FOOD LABELLING STANDARDS

29. In what ways can consistency across Australia and New Zealand in the interpretation and administration of food labelling standards be improved?

The OPC understands that the development of food labelling standards has been ad hoc, and there is a lack of clear, overarching policy or principles guiding labelling standards. The OPC believes this has contributed to inconsistent interpretation and administration of labelling standards.

To improve consistency in interpretation and administration, the OPC recommends the development of a set of clear, overarching labelling principles, which set out the objectives of food labelling and principles to guide the direction of labelling standards development, administration and interpretation.

To sit under these principles, the OPC recommends the development of more detailed, plain English guidelines as to interpretation of labelling standards (similar to the ACCC's *Food and Beverage Industry: Food Descriptors Guideline to the Trade Practices Act*⁶⁷). This would encourage consistent interpretation by regulators and industry, and would promote compliance with food labelling standards.

These labelling principles and guidelines should be developed in consultation with stakeholders.

To aid consistent interpretation, the OPC also recommends that current and future labelling standards be reviewed to ensure they are drafted in simple, plain and unequivocal language. All new and existing standards should also be subject to regular systematic reviews to ensure standards continue to be consistent with labelling principles, and targeted and effective to meet labelling objectives, in light of changing economic and social conditions and new evidence.

In addition, the OPC strongly supports the establishment of a national food labelling enforcement authority, which could be responsible for issuing guidelines, providing training with respect to interpretation and compliance and conducting education campaigns and social marketing in relation to food labelling. This is discussed below in sections 30 and 31.

30. In what ways can consistency, especially within Australia, in the enforcement of food labelling standards be improved?

The OPC believes the establishment of a national agency with responsibility for enforcement of food standards would lead to significant improvements in consistency of enforcement within Australia. This authority could be an arm of or unit within the ACCC, FSANZ or the Department of Health and Ageing, or a new independent authority.

Such an authority could take on a similar role to the ACCC in consumer protection. The powers of the authority could be limited to monitoring, investigation and enforcement of labelling standards, and it could be responsible for issuing interpretation and enforcement guidelines, providing compliance training, and conducting education campaigns and social marketing in relation to food

⁶⁷ ACCC (2006) *Food and Beverage Industry: Food Descriptors Guideline to the Trade Practices Act*, Canberra: Commonwealth of Australia
<<http://www.accc.gov.au/content/item.phtml?itemId=771468&nodeId=303812cdfa698071341bf9f1ac983066&fn=Food+descriptors+guidelines.pdf>> at 4 May 2010.

labelling, etc. Alternatively, a centralised decision-making body could be established with set rules and terms of reference, a right of appeal to an independent review body, and a further right of appeal on points of law (e.g. to the Australian Administrative Appeals Tribunal). Such a body should have the ability to call on expert panellists with specific knowledge and experience of food labelling and health promotion.

A national enforcement authority would provide a single route for submission of complaints about food labelling. In addition, the OPC recommends that a national authority should conduct regular monitoring and audits of labelling compliance; investigation of breaches should not only occur in response to complaints.

Consideration should also be given to vesting a national authority with responsibility for vetting new products that enter the market, and changes to packaging of existing products, for compliance with labelling requirements. This could also be a function of a national labelling authority. We acknowledge that this would entail regulatory costs to industry, and may create barriers to entry to markets, but these costs may well be outweighed by the public health and safety benefits of this approach.

If a national enforcement authority or decision-making body is not established, strategies and processes must at least be established to ensure better national coordination of enforcement activities. One alternative to establishment of a national enforcement authority could be establishment of a cooperative scheme whereby states and territories continue to be responsible for enforcement and a national body is established to monitor compliance with labelling standards, act as a one-stop shop or clearing house for food labelling complaints, and coordinate enforcement activities. The national body could investigate complaints and refer potential cases of non-compliance to appropriate authorities in relevant jurisdictions for enforcement. The body could also be responsible for issuing guidelines in relation to interpretation and enforcement of food standards, and providing training to enforcing authorities in the jurisdictions.

The OPC believes the development of overarching food labelling principles and detailed interpretation guidelines, as discussed above in section 29, would also aid consistency in enforcement.

31. What are the strengths and weaknesses of placing the responsibility for the interpretation, administration and enforcement of labelling standards in Australia with a national authority applying Commonwealth law and with compatible arrangements for New Zealand?

As noted above, the OPC strongly supports the placing of responsibility for the interpretation, administration and enforcement of food labelling standards in a national authority applying Commonwealth law, and considers that there would be a number of advantages to the establishment of a national enforcement authority.

First, and most obviously, this would help to ensure consistency and uniformity in the interpretation and enforcement of labelling standards, and avoid overlap of enforcement activities and resources between jurisdictions.

Second, most packaged products are manufactured and sold nationally. Labelling issues tend to have national significance, and breaches of labelling standards tend to occur nation-wide. Therefore, it clearly makes sense for the interpretation, administration and enforcement of labelling

standards to be vested in a national authority. Enforcement of labelling standards can be contrasted with enforcement of other substantive food standards, such as standards relating to food hygiene and safety, which needs to be carried out locally as it involves inspection of local businesses and manufacturers. There is not such need for local enforcement of labelling standards.

Third, this would enable enforcement of labelling standards by authorities with specialist labelling expertise, and with sufficient remit and resources to enable them to focus their enforcement activities specifically on food labelling. Currently, enforcement is carried out by local government authorised officers in each jurisdiction, many of whom do not have any food labelling expertise, and who are responsible for enforcement of a diverse range of food and other public health regulations, have limited time and resources, and tend to prioritise enforcement of food standards relating to food safety.

Fourth, this may better enable application and enforcement of labelling standards to promote broader public health objectives, such as obesity prevention and alcohol-harm reduction, which are national issues and best addressed through coordinated national strategies.

Fifth, the vesting of labelling enforcement responsibility in one national agency (rather than the current situation in which enforcement responsibility is shared between nine jurisdictions) would enable better coordination of labelling enforcement activities with the activities of other regulators, such as the ACCC and state and territory consumer affairs agencies.

Sixth, this would help to minimise any regulatory costs to business that may be associated with inconsistent interpretation and enforcement of labelling standards between states/territories.

32. If such an approach was adopted, what are the strengths and weaknesses of such a national authority being an existing agency; or a specific food labelling agency; or a specific unit within an existing agency?

Given FSANZ's significant expertise in food standards development, the OPC considers that there would be clear advantages to vesting responsibility for food labelling enforcement in FSANZ or a specific unit within FSANZ. However, since labelling standards are very different from other substantive food standards, and enforcement is very different from standards development, FSANZ's expertise might not be best suited to enforcement of food labelling standards. In addition, this would change the nature of FSANZ from an agency purely responsible for standards development to an enforcement agency. As FSANZ works very closely with industry and other stakeholders in development of food standards, there may be a risk of real or perceived lack of independence in FSANZ's enforcement activities, and FSANZ's huge remit and workload may mean that it would be unable to give sufficient priority to enforcement activities.

The OPC's preferred better approach would be for food labelling enforcement responsibility to be vested in a unit within the ACCC or to be carried out by a separate agency overseen by the ACCC, as the ACCC's activities and expertise in enforcing consumer protection legislation would better complement, and be of significant advantage, in enforcement of food labelling standards.

Alternatively, a separate specialist food-labelling agency would have the capacity to develop, and appoint staff with, specialist food labelling expertise, and to devote resources and activities entirely to food labelling enforcement. However, such an agency would not have the benefit of

existing processes, structures and expertise.

33. If such an approach was adopted, what are appropriate mechanisms to deal with the constitutional limits to the Commonwealth's powers?

As discussed above, the OPC's preferred approach would be for responsibility for interpretation, administration and enforcement of labelling standards to be vested in a national agency or unit applying Commonwealth law, ideally a unit of or agency overseen by the ACCC. However, as noted in the Issues Consultation Paper, there may be constitutional limits to the Commonwealth's powers to enforce labelling standards.

The OPC's understanding is that the Commonwealth could rely on the corporations and trade and commerce powers in the Constitution to implement and enforce food-labelling standards under Commonwealth law. However, labelling by local food businesses that are not corporations and that trade only within particular states and territories may fall outside the scope of these powers. To deal with these limits, the OPC suggests that states and territories could retain complementary food labelling law (via existing provisions in state and territory Food Acts that give effect to the Food Standards Code). A national food labelling agency could refer cases of non-compliance with labelling standards by local food businesses to dedicated authorities in relevant jurisdictions (e.g. authorities within state and territory consumer affairs agencies and/or Departments of Health) to deal with under existing state and territory processes. These authorities could be appropriately trained in interpretation and enforcement of labelling standards.

Alternatively, as discussed above in section 30, a cooperative scheme could be established under which states and territories retain separate enforcement powers (and enforcement is carried out by state and territory consumer affairs agencies and/or Departments of Health) and a national body is established to monitor compliance with labelling standards, act as a clearing house for food labelling complaints, and coordinate enforcement activities.

A further option might be for states and territories to agree to confer food labelling enforcement powers to Commonwealth authorities. However, the effect of the High Court decision in *R v Hughes* (2000) 202 CLR 535 would need to be considered.

34. What are the advantages and disadvantages of retaining governments' primary responsibility for administering food labelling regulations?

The OPC strongly opposes any move to self-regulation by industry, or co-regulation involving industry, of food labelling. As discussed in section 5 above, the OPC believes it is crucial for ensuring food safety, and protecting and promoting the health of the population, that governments' primary responsibility for administering food regulations is retained.

Government guides to regulation advise that self-regulation should be considered where the problem in question poses 'no strong public interest concern, in particular, no major public health and safety concern' and 'the problem is a low-risk event of low impact or significance'. As discussed above, we believe there is a high risk that inaccurate and inadequate food labelling endangers public health in the short- and long-term.

For the reasons discussed above, food-labelling requirements need to apply universally and consistently to be effective. There also needs to be consultation and transparency in the development of requirements, and effective monitoring, complaint handling, decision-making, and

compliance mechanisms. For self-regulation of labelling to be effective, industry would need to have sufficient incentive to develop and comply with effective requirements, and the interests of industry and consumers would need to converge.

Self-regulation has already been shown to be ineffective on the criteria set out above in food labelling and food advertising, and in other public health areas, such as tobacco control.

As discussed above, there are numerous problems with the Percent DI FOPL scheme, development of which was not based on consumer research or public consultation.

There are also numerous problems with the Australian Association of National Advertisers' scheme for self-regulating food advertising to children: self-regulatory provisions are ambiguous and narrowly drafted, and fail to impose any meaningful limits on advertising of unhealthy food to children; provisions are changed without consultation or publication; the coverage of various codes to different types of advertising is incomplete and uncertain; administration of the scheme is not independent of industry or representative of all stakeholders; there are deficiencies in the objectivity and fairness of decision-making; decisions cannot be enforced; and there are no effective compliance mechanisms.⁶⁸

As discussed above, the major problem with self-regulation, particularly in relation to front-of-pack labelling, is that industry lacks sufficient incentive to self-regulate effectively. In order to be effective to inform consumers and achieve health promotion objectives, front-of-pack labelling would need to assist consumers to identify, and deter consumption of, unhealthy food products. Obviously the objective of food companies is to maximise sales of products. Companies selling predominantly unhealthy products will not voluntarily develop, submit to, or comply with, labelling requirements (such as traffic light labels) that identify products as unhealthy and have an adverse impact on product sales. In fact, in the OPC's view, industry's incentive to self-regulate front-of-pack labelling is to ensure that front-of-pack labelling requirements that have this effect are not introduced.

For this reason, the OPC does not believe co-regulation (whereby industry develop and/or apply labelling requirements within a framework imposed by government) would be effective with respect to front-of-pack labelling if industry were involved in the development of the scheme.

⁶⁸ MacKay, S. (2009) 'Food advertising and obesity in Australia: to what extent can self-regulation protect the interests of children?' *Monash University Law Review*, 35(1), 118-146.

CONCLUSION

The OPC thanks the Review Panel for the opportunity to participate in the Food Labelling Law and Policy Review.

We urge the Review Panel to consider our recommendations for changes to food labelling regulation to help consumers make informed choices and promote healthier eating. We believe these changes are a crucial component of a comprehensive strategy to address rapidly increasing levels of overweight and obesity and diet-related chronic disease in Australia.

In particular, we urge the Review Panel to recommend introduction of mandatory nutrition information labelling with colour-coded interpretive guidance on the front of food packaging, on menus in fast food outlets and food retail outlets in public institutions, and on vending machines, as well as nutrition information disclosure in food advertising. We believe these interventions are urgently needed to help overcome confusion and misleading impressions created by food companies' marketing of the health and nutrition benefits of products, to enable consumers to effectively assess and compare the healthiness of food products and identify unhealthy and healthy choices, and to encourage healthier product selection and eating. In addition, these interventions would prompt healthier food product formulation by industry.

Please contact Sarah MacKay, Senior Legal Policy Adviser, Obesity Policy Coalition, on (03) 9635 5612 or sarah.mackay@cancervic.org.au if you have any questions or need further information in relation to this submission.