



**Health Star Rating Advisory Committee  
Review of the form of food ('as prepared') rules in the  
Guide for Industry for the Health Star Ratings**

**Obesity Policy Coalition submission  
30 June 2017**

## **Consultation Questions**

This discussion paper is the first stage of public submissions for the reappraisal of the 'as prepared' provision. It is primarily intended to provide a stimulus to stakeholders to support:

- the validation or rejection of the issues raised; and
- the identification of potential options for the 'as prepared' rules.

**1. Please identify your background/interest group.**

**2. The Health Star Rating system has been implemented in both Australia and New Zealand. Please advise which country your submission is in relation to.**

**3. Does the current application of the 'as prepared' rules in the Guide for Industry to the HSR Calculator pose any problems for consumers, industry, or alignment with the Australian Dietary Guidelines and the New Zealand Eating and Activity Guidelines?**

**4. Please provide your views on the options previously discussed by the HSRAC.**

**5. Please provide other relevant information and insight, including other potential options for the 'as prepared' rules.**

On-line Submission answers

From the Obesity Policy Coalition to the Health Star Rating Advisory Committee on the reappraisal of the form of the food ('as prepared') rules in *The Guide for Industry to the HSR Calculator*.

30<sup>th</sup> June 2017

**Q1. Please identify your background/interest group.**

Public Health

**Q2. The Health Star Rating system has been implemented in both Australia and New Zealand. Please advise which country your submission is in relation to.**

Australia only

### **3. Does the current application of the form of the food ('as prepared') rules in the Guide for Industry to the Health Star Rating (HSR) Calculator pose any problems for consumers, industry, or alignment with dietary guidelines?**

The Obesity Policy Coalition (OPC) has concerns with the current 'as prepared' rules, specifically the real risk that current guidance materials are producing outcomes that may be unfair or misleading and confusing for consumers. The operation of the 'as prepared' rules has attracted negative media attention, which threatens to discredit the Health Star Rating (HSR) system. If the HSR system is to achieve its primary public health objective, consumers must understand and trust the system.

We understand manufacturers displaying HSR 'as prepared' report they are following the Guide for Industry to the Health Star Rating Calculator (the Guide), but we query whether this document is producing the outcomes intended. The Guide in its present form allows food manufacturers to use the most favourable method of preparing the food from certain limited categories. Understandably, companies are using the optimal preparation of their products to derive the highest possible HSR.

#### **Consistency with the Australian Consumer Law**

The *Food Standards Australia New Zealand Act 1991* (Cth) provides that one of the key objectives for FSANZ in developing or varying food regulatory measures is 'the prevention of misleading or deceptive conduct'. This objective is reflected in the proposed High Order Policy Principles of Developing a FoPL scheme.

Food packaging in Australia must also comply with existing provisions of the Australian Consumer Law. Recent decisions of the Australian Competition and Consumer Commission (ACCC) highlight the important role of consumer protection laws in protecting public health. For example, in August 2015 Uncle Tobys were fined for labelling oat porridge a 'Natural Source of Protein\* Superfood', when relying on fine print that this was '\*when prepared with 1/2 or 1/3 cup of skim milk.'

In its reasoning, the ACCC noted at least some people prepare oats with water, and that oats themselves were not high in protein, contrary to the nutritional claim made. The fine print disclaimer was insufficient to correct or qualify the dominant impression created by the packaging. For this false or misleading representation, the manufacturer was penalised \$32,400.

Decisions such as these suggest a real risk that current HSR guidance materials could produce outcomes considered similarly misleading. 'As prepared' Milo displays a HSR of 4.5 prominently on the package, supplemented by fine print similar to that unsuccessfully relied upon by Uncle Tobys, in this case three teaspoons of Milo placed in a glass of skim milk. Just as oats are sometimes prepared with water, it is popularly understood (and supported by CHOICE research)<sup>1</sup> that Milo is consumed in a variety of ways, nearly all of which would derive a less favourable HSR outcome. Even the image presented next to HSR on pack suggests by virtue of the colour of the milk and piled crust a preparation would appear to require more than three teaspoons of product.

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<sup>1</sup> CHOICE, Health Star Ratings and Added Sugar- A Consumer Perspective, August 2016.

<https://www.choice.com.au/food-and-drink/nutrition/food-labelling/articles/health-star-ratings-report>

The report states that of the people surveyed only 13% said that they drink Milo with skim milk. In comparison 23% said that drank Milo with light milk, 55% said they drank Milo with full cream milk, 4% with water, while 2% said that have Milo with ice-cream.

This potential inconsistency between the Guidelines and existing Australian law creates an imperative for action that needs to be addressed in an expedited way.

### **The effect of the option on consumer behaviour**

The OPC is concerned that the ‘as prepared’ rules in their current form are potentially misleading or confusing consumers.

The ‘as prepared’ rules are derived from existing provisions of the *Australia New Zealand Food Standards Code* (Standard 1.2.8, Clauses 11-13) pertaining to provision of the Nutrition Information Panel (NIP) on certain foods that are typically drained, reconstituted, or intended to be prepared or consumed with at least one other food.

On the back-of-pack, these provisions result in the parallel display of multiple nutrient profiles for consumer comparison: the food ‘as sold’ is presented in one column alongside that obtained when the food is prepared as described at the top of that column and directed elsewhere on the pack. While the ‘as prepared’ rules were intended to make nutrition information *more* meaningful to consumers in the NIP context, we are concerned attempts to translate these rules to HSR – which by design relies upon a single, simple graphic to provide at-a-glance information on a product’s overall healthiness – are producing exactly the opposite effect and potentially misleading or confusing consumers.

A key objective of the HSR system, as set out in the Australian and New Zealand Ministerial Forum on Food regulation (FoFR) policy statement, is to guide consumer choice by being readily understandable across socio-economic and culturally and linguistically diverse and low literacy/numeracy groups. The application of HSR using the ‘as prepared’ rule, has the potential to mislead and confuse as to the overall healthiness of the product.

This may be reflected in the significantly fewer respondents (compared to the September 2015 survey) reporting that they view the Health Star Rating system as reliable or that it is easy to use.<sup>2</sup>

The potentially misleading HSR score on a product, as in the case of Milo powder, could lead a consumer to believe that a product is indeed healthier than it is in the form they consume and lead to higher consumption of less healthy foods. This outcome would not achieve another of the aims of the HSR system which is to increase awareness of foods that, within the overall context may contribute negatively or positively to the risk factors associated with chronic disease.

In addition when consumers see Milo which is high in sugar with a rating of 4.5 health stars, it causes them to lose confidence in the entire HSR system. This may be influencing the decline (compared to the September 2015 result) in the proportion of respondents who trust the HSR system, or see it as relevant to their family.<sup>3</sup>

### **Consistency with the Australian Dietary Guidelines**

Guideline 3 of the Australian Dietary Guidelines (ADGs) recommends limiting intake of food high in saturated fats, added salt and added sugar, so called discretionary foods, and not from the five food groups, or core foods, that the ADGs recommend should constitute the bulk of a person’s diet. The majority of foods to be considered by the reappraisal of the ‘as prepared’ rules, and therefore beneficiaries of the ‘as prepared’ rule, are discretionary foods. The result of this is that many of

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<sup>2</sup> Heart Foundation, Progress report on the monitoring of the Health Star System, p4

<sup>3</sup> Ibid.

these discretionary foods are receiving a higher rating, often as a result of the addition of a core food. For example Milo is a discretionary food that receives an increased HSR rating after the addition of a core food, milk. This has the effect of promoting the consumption of many of these foods high in saturated fat, added sugar or added salt, which is at odds with the ADGs which recommends that such foods should be limited.

**The impact of the option on the burden on industry and likely commitment to the HSRS**

The benefits of the 'as prepared' rules are not enjoyed equally by all manufacturers. The Guidelines state, for example, that breakfast cereals (which frequently display a variety of 'as prepared' values in the NIP) must display HSR *as sold*. Breadcrumbs are also specified as an example which can be consumed in a variety of ways and thereby guided to display HSR *as sold*.

By contrast, a packet of Nestle's Maggi Best Ever Burger Mix (see Attachment A) whose primary ingredient is salt can elevate an 'as sold' HSR of 0.5 to one of 4.0 'as prepared' on the basis of valuable nutrients obtained from combining the nutrients from the other ingredients in a burger including vegetables, lean mince and wholegrain bread. At the same time, producers and manufacturers of these typically unpackaged, healthier core items are not able to enjoy the benefit of using HSR on their own products given they fall outside the scope of the system.

Those manufacturers of products that have been authorised to use the 'as prepared' rules to calculate the HSR have been provided with a tool to that provides maximum marketing benefit for their products. A manufacturer can calculate the HSR based on the most favourable form of consumption using ingredients which, in combination, contribute most to increasing the HSR.

Whether or not a food manufacturer is influenced by the 'as prepared' rules will depend on whether the food produced is in one of the categories that are authorised to follow the 'as prepared' guidelines.

## Attachment A: Maggi Best Ever Beef Burgers



### Front of pack:

HSR calculated as 4.0 on basis of 'as prepared' nutrient information/per 100g, based on the information in column 5 of the NIP.

A list on the left of the packet suggests adding fresh lean beef mince, wholemeal bun, baby spinach, tomato, onion and canned beetroot. This is similar but not identical to the serving suggestion pictured above the HSR logo, which also includes tomato sauce.

### Back of pack:

The NIP is displayed according to Standard 1.2.8 of *Australia New Zealand Food Standards Code*, with columns for 'as sold' and 'as prepared' on a per serving basis and per 100g.

As prepared information in columns 4 and 5 of the NIP appears with a ^ symbol, with ^ meaning 'when prepared according to recipe directions.'

A title 'Cook your meal' lists 500g lean beef mince, 4 wholemeal buns (no size specified), 3 cups of spinach, a medium tomato, a small red onion and 4 slices of canned beetroot to be added. Separate cooking instructions specify to top the burger with salt reduced tomato or BBQ sauce.

It is unclear which portion (or all) of these instructions constitute the 'recipe directions' for purposes of calculating the HSR. An additional pictorial example of the burger served displays the burger with half a plate filled with salad.

The ingredient list specifies the primary ingredient of the packaged item is salt. For comparison, a HSR calculated using the 'as sold' information (NIP column 2) would result in an outcome of 0.5.

## **4. Please provide your views on the options previously discussed by the HSR Advisory Committee (HSRAC).**

### ***Option1- Status Quo***

Please see answer to question 3.

### ***Option 2- Clarification of existing rules***

The OPC has concerns about the second option, clarification of the 'as prepared' rules, as it does not provide detail of the changes proposed. The option states that the presumption for HSR calculation is 'as sold' apart from specific exceptions. The option does not specify what products would qualify as exceptions or how they would be dealt with in detail. Most notably there is no guidance provided about how the HSR would be calculated where there are multiple methods of preparing the product. Presumably this would allow food manufacturers to use the most favourable method of preparing the food from certain limited categories as is the situation under the current rules. Accordingly there is no assurance that the rules would be an improvement on the status quo and the assumption is made for the purpose of this response that many effects would be replicated.

#### **The impact of the option on HSR values**

If one assumes that the rules would allow manufacturers to calculate the HSR on a method they have selected, where there are multiple methods of preparing a product, a manufacturer could adopt a more favourable recipe, for example milo as prepared with skim milk and a small quantity of milo, and the rules would have little impact on the current perceived flaws in the 'as prepared' rules.

#### **The effect of the option on consumer behaviour**

The OPC is concerned that the second option would be potentially misleading and confusing for consumers in the same way as the current 'as prepared' rules, as it would be open to food manufacturers to use the most favourable method of preparing the food from certain limited categories, where there are multiple methods of preparing the product. If these products are consumed in a different way than as directed on the pack, the potentially misleading HSR score on a product could lead a consumer to believe that a product is indeed healthier than it is in the form they consume. This could lead to higher consumption of unhealthy food in a person's daily diet. This outcome would not achieve the aim of the HSR system to increase awareness of foods that, within the overall context may contribute negatively or positively to the risk factors associated with chronic disease.

In addition this option could lead to a negative perception of the entire HSR system as it would seem to allow products that one would otherwise perceive to be of low nutritional value achieve a higher rating through the addition of more nutritious ingredients.

One version of clarifying of this option that is under discussion is the modification of the existing rules, as described in this option, with the addition of dual HSR labelling. This arrangement would apply where a product may be prepared according to instructions on the packaging, and there would be a HSR for both the 'as sold' and 'as prepared' forms of the product. This would create significant confusion for the consumer, particularly for consumers with low literacy or from a linguistically diverse background. We note that this modification would not fulfil one of the main objectives of the



HSR system which is to provide a scheme that is readily understandable and meaningful across socio-economic groups and culturally and linguistically diverse groups and low literacy/low numeracy groups. Given that research has confirmed that consumers prefer HSR when compared to other labelling options because of the system's perceived simplicity<sup>4</sup> this modification would not be regarded favourably by consumers and meet the objectives of the system.

#### **Consistency with the Australian Dietary Guidelines**

It is difficult to determine the impact on the ADGs with certainty without more information about the operation of the option, however if we assume that similar in effect as the status quo, the same concerns apply.

#### **The impact of the option on the burden on industry and likely commitment to the HSRS**

It is difficult to determine the impact on industry without more information about the operation of the option, however if we assume that similar in effect as the status quo so the same concerns apply.

### ***Option 3- Product as sold or rehydrated with water***

Under this option products would have their HSR calculated on an 'as sold' form apart from products that must be reconstituted with water, which would have their HSR calculated on the basis of product hydrated with water as directed on the packaging. The OPC believes that this option should also include that where products are required to be drained before consumption their HSR should be calculated on that basis. This option also makes a provision for exemptions for specified categories. The OPC supports this option without any exemptions for specified categories.

#### **The impact of the option on HSR values**

The HSR would be calculated only on the basis of what is contained in the package being sold, apart from those foods that are required to be drained or rehydrated with water. Under this option, HSR for foods such as canned soups, dehydrated pasta and rice products, gravy, sauce mixes, mashed potato mix, cordial and powdered soups would be calculated on the basis of their hydrated form with water as shown in the NIP. Apart from these instances, there would be no exception to the standard process of calculating the HSR on the basis of 100 grams or 100 millilitres of a product where a product must be prepared prior to consumption. This would allow like products to be compared with like products when shopping. That is concentrated products, such as cake mixes or hamburger mixes, could be compared with other concentrates and similar ready to consume products could be compared with ready to consume products, which are most likely to be on the shelf next to each other. This removes any ambiguity or unfairness from the comparisons. It would allow the consumer to see which product is the healthier product among its similar competitors and also to see the HSR evaluation of a product without the addition of other, healthy whole foods. This option would best satisfy the initial aim of the HSR system of 'enabling direct comparison between individual foods that contribute to the risk factors of diet related chronic disease'.

This option of calculating the HSR on the basis of the product 'as sold', apart from products which must be drained or reconstituted with water, uses the information that must be displayed on the Nutritional Information Panel (NIP) as required by the Australian and New Zealand Food Standards

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<sup>4</sup> Pettigrew S, Talati Z, Miller C, Dixon H, Kelly, B and Ball, K, The Types and aspects of front of pack labelling schemes preferred by adults and children, *Appetite*, 109 (2017) 115-123

Code.<sup>5</sup> It is noted that the Guide directs that the calculation of the HSR should be based on the form of food for which the NIP information has been displayed.<sup>6</sup>

The calculation of HSR according to this option, where products may be reconstituted with water, still has the potential to be misleading as the amount of water stated on pack to be added to a product may vary, with the result that there would continue to be various methods of preparing the product. Under this option, the actual amount of water to be added to the product, as directed by the manufacturer, would not be stipulated. As a result it is possible that manufacturers could include more water in the preparation instructions and thereby attract a higher HSR. It is anticipated that the effect on the final HSR would not be significant enough to warrant the removal of this exception.

### **The effect of the option on consumer behaviour**

The end result for the consumer would be clarity, the HSR would be calculated on what they see before them in the packaged product. The consumer would be able to interrogate the relative healthiness of the products compared to other similar foods. This option does not require any interpretation and would accordingly satisfy the HSR objective of being readily understandable across socio-economic and culturally and linguistically diverse and low literacy/numeracy groups.

The OPC believes that this would lead to consumer satisfaction as it would seem that consumers agree that the HSR should be calculated on the basis of the product 'as sold'. A Choice survey conducted in 2016 found that 49% of respondents said that the HSR should be calculated on 100 grams or millilitres of the product alone (compared to 36% who said HSR should be calculated 'as prepared').<sup>7</sup> Research has shown that consumer preference is for a front of pack labelling system that is consistent across all food packages<sup>8</sup> which would be achieved if the HSR for all foods is calculated on the basis of the product 'as sold'. The introduction of this option should lead to increased consumer confidence in the system and increased use of the HSR system by consumers when they are choosing which products to purchase.

### **Consistency with the Australian Dietary Guidelines**

The ADGs suggest that the bulk of a person's intake of foods should be from the five core food groups and that if chosen, discretionary choices should be eaten only sometimes and in small amounts. Discretionary choices are so described because they are not an essential or necessary part of healthy dietary patterns.<sup>9</sup> Discretionary choices are often high in kilojoules, saturated fat, added sugars and/or salt or alcohol. The Australian Guide to Healthy Eating states that most Australians consume too many discretionary choices instead of choosing foods from the Five Food Groups.<sup>10</sup>

The rating of products on the basis of how they are sold is an accurate reflection of healthiness of the product and will enable consumers to determine more accurately whether they should consume less of the product in line with the ADGs because a product is high in salt, sugar or saturated fat.

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<sup>5</sup> Australian and New Zealand Food Standards Code, Standards 1.2.8, Clauses 11- 13

<sup>6</sup> Guide for industry to the Health Star Rating Calculator, version 5, June 2016, p7.

<sup>7</sup> CHOICE, Health Star Ratings and Added Sugar- A Consumer Perspective, August 2016, p11.

<sup>8</sup> <https://www.choice.com.au/food-and-drink/nutrition/food-labelling/articles/health-star-ratings-report>

<sup>9</sup> Kelly B et al, Consumer testing of the acceptability and effectiveness of front-of-pack labelling systems for the Australian grocery market, *Health Promotions International*, 2009 Vol 24 No 2 p126

<sup>10</sup> Eat for Health, Australian Dietary Guidelines Summary, 2013, p 27

<sup>10</sup> *ibid*

Additionally this option removes the opportunity for a product high in salt, sugar or saturated fat to earn a higher HSR through the theoretical possible presence of one or more core ingredients at the time of eating. Therefore a HSR calculated 'as sold' would better differentiate between core foods and discretionary choices.

#### **The impact of the option on the burden on industry and likely commitment to the HSRS**

This option would provide equity amongst a range of products. As discussed earlier the benefits of the 'as prepared' rules are not enjoyed equally by all manufacturers in other categories. The Guidelines state, for example, that breakfast cereals (which frequently display a variety of 'as prepared' values in the NIP) must display HSR 'as sold'. It is foreseeable that some food manufacturers would prefer this 'as sold' option.

This option might not be favoured by some food manufacturers as a significant number of products would no longer be authorised to calculate their HSR based on the 'as prepared' rules and accordingly one would imagine that a number of manufactures would not utilise the HSR on their products. Whilst uptake by industry is important, utility to consumers should not be sacrificed to encourage eligible manufacturers on whom the maximum marketing benefit of the current 'as prepared' rules are conferred.

#### **Recommendation**

The OPC recommends that the current 'as prepared' rules be replaced by a modified version of option 3. Under this option HSRs would be calculated on the basis of products 'as sold', apart from products that are required to be drained or reconstituted with water prior to consumption. The OPC does not support any other exceptions to the 'as sold' presumption.

## **5. Please provide any further relevant information or material on the ‘as prepared’ rules here.**

### **Timeframe for modification of the “as prepared rules’**

The OPC recommends that modification of the ‘as prepared’ rules be made as expeditiously as possible given the previously discussed negative media attention and associated decline in consumer confidence in the HSR system. We note that the ‘as prepared’ rules are contained in the Guidelines, which have no legislative basis, and may therefore be modified without extensive procedural requirements, apart from approval from the Food Regulation Standing Committee (FRSC). Indeed, there have been 25 amendments<sup>11</sup> to the Guidelines since the inception of the HSR system in 2014. We accordingly encourage FRSC to approve the amendments as soon as possible. We are concerned that the discussion paper sets out a timeline for the appraisal of the ‘as prepared’ rules that extends into 2019. For the system to continue to flourish, this issue needs to be resolved sooner rather than later. Failure to do so will mean consumer confidence in the system will be severely compromised by the time of the five year review.

### **Recommendation**

The OPC recommends that modification of the ‘as prepared’ rules be made as soon as possible given the previously discussed negative media attention and associated decline in consumer confidence in the HSR system.

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<sup>11</sup> Guide for industry to the Health Star Rating Calculator, pii-iii.