

## POLICY BRIEF

# PRIORITISING HEALTH: REFORMING PLANNING LAWS TO REDUCE OVERWEIGHT AND OBESITY IN AUSTRALIA

## SUMMARY

The high rates of obesity in the Australian population and the consequent increased risk of non-communicable diseases (NCD), present a great challenge to governments and policy makers. Increasingly, strategies to influence health have become priorities for planners, however Australian planning laws continue to operate largely without regard for public health goals.<sup>1</sup>

This policy brief provides an overview of:

1. the growing body of research into the impact of urban planning on health and NCD, particularly through influencing physical activity levels and diets;
2. the limited role of local governments in shaping planning priorities, their growing role in promoting preventative health in local communities, and the conflict that currently exists between the operation of these two schemes; and
3. the potential for reform of planning laws by state governments to impact rates of overweight and obesity and to improve health in Australian communities.

## BACKGROUND

Almost two thirds of Australian adults (63%) are overweight or obese.<sup>2</sup> Further, over one quarter of children is overweight or obese (27%).<sup>3</sup> These alarming figures mean that a large number of Australians are at increased risk of NCD.<sup>4</sup> This creates the need for increased consideration of ways in which governments and policy makers may facilitate healthy and active lifestyles.

The local environments in which Australians go about their lives can have a significant impact on behaviours that influence rates of overweight and obesity.<sup>5,6,7</sup> Social factors also play a role, with socio-economic status (SES) negatively associated with risk of overweight and obesity in Australia.<sup>8</sup> The influence of built environments, which can facilitate or inhibit health behaviours like physical activity and healthy eating, means that the urban planning laws are a potentially powerful tool for influencing health. An examination of Australia's planning systems, however, reveals that significant reforms are needed to align planning policy goals with this pressing public health challenge.<sup>9</sup>

Australia has also continued to experience steady population growth, particularly in the three most populous states.<sup>10</sup> Fast-developing suburbs may lack necessary infrastructure and foster environments that inhibit, rather than encourage, healthy lifestyles.<sup>11</sup>

## 1. THE IMPACT OF BUILT ENVIRONMENTS ON OBESITY

Evidence exploring the relationships between food environments and obesity is mixed.<sup>12</sup> Two factors, however, local access to fresh food and local concentration of fast food outlets, have been posited as factors that may impact on risk of overweight, obesity and development of NCDs. Other factors such as access to open space, recreational facilities and public transport also affect health by limiting or facilitating opportunities for physical activity.<sup>13</sup>

### (a) Access to fresh, healthy foods

Research suggests that access and proximity to sources of healthy and fresh foods such as fruit and vegetables may promote increased consumption of such foods.<sup>14</sup> This might be because larger travelling distances to fresh food retailers create a barrier, particularly for people who experience other barriers to travel such as people on low incomes and the elderly. These groups are more likely to rely on smaller, local stores where the quality and variety of fresh food is more limited.<sup>15</sup>

Studies have also found that Victorians living in communities serviced by a greater number of fresh fruit and vegetable markets and stores relative to franchised fast food stores are less likely to purchase fast food.<sup>16</sup> Unfortunately, many Australian neighbourhoods lack convenient access to fresh food, particularly those in low SES areas.<sup>17</sup>

### (b) Fast food outlet density and SES

The density and placement of fast food outlets is another aspect of planning that may impact community health.

Proposed fast food outlets have attracted significant community activism in recent years. Fast food outlets are higher in density in low SES areas in Australia.<sup>18</sup> The problem is not new, with ecological research conducted using Melbourne data from 1996 finding that people with low median weekly income experience up to 2.5 times the exposure to fast food outlets of those with high incomes.<sup>19</sup>

Although evidence of association between high concentration of fast food outlets and high local consumption rates is not conclusive, Australian research into consumption patterns of takeaway foods relative to SES (estimated using education) has found that people of lower SES were higher consumers of takeaway food overall, and that the frequency and types of takeaway foods consumed by socioeconomically disadvantaged groups may contribute to inequalities in overweight, obesity and chronic disease.<sup>20</sup> Research in Melbourne has also provided some evidence of an area-level association of lower socioeconomic status with higher levels of fast food purchasing.<sup>21</sup>

A systematic review of peer-reviewed studies examining obesity prevalence relative to fast food density, reported that approximately half found a positive correlation between higher obesity and living in areas with higher access to fast food.<sup>22</sup> A recent study in the United States found that areas with a high-density of fast food outlets compared to healthier options was more significantly associated with increased levels of obesity than areas with limited access to affordable and nutritious food.<sup>23</sup> Availability of fast food outlets and convenience stores close to home may also negatively impact on children's fruit and vegetable intake.<sup>24</sup>

A factor complicating this research may be the impact of 'spatial polygamy', with people relating to 'anchor points' beyond their home (e.g. school, work, shops), which collectively mediate health behaviours.<sup>25</sup> To this end, environments around schools and other children's settings may impact dietary preferences and rates of obesity.<sup>26</sup>

## 2. LOCAL GOVERNMENT'S ROLE IN PLANNING LAW<sup>27</sup>

Planning schemes in Australia are developed under state enacted overarching planning laws, setting out objectives and policies, which are in turn implemented and overseen by local governments. Local councils develop their local planning schemes and set policy priorities, which can be tailored to the needs of the local area, but must be consistent with overarching state policy objectives. The principle legislation in each state typically sets out key objectives and considerations which must be

weighed and assessed by local government in assessing planning proposals, and in the administration of the scheme generally.

Legislative schemes for planning in Australia have not generally included the promotion of health and wellbeing as an objective or priority. More typical objectives include the conservation of natural<sup>28</sup> and historical resources.<sup>29</sup> Principal planning instruments overarching planning law in most states, including Victoria, South Australia and New South Wales, do not allow for preventative health considerations to impact planning decisions. An example is the Victorian *Planning and Environment Act 1987*, which sets out objectives and material considerations underpinning Victorian planning schemes, which include economic, social and environmental impacts of developments, but do not include health.<sup>30</sup>

States that do include a specific objective related to health in their planning laws include Queensland, where the *Sustainable Planning Act (2009)* requires that planning should “promote the cultural, economic, physical and social wellbeing of people and communities”, and Tasmania where the objects of the *Land Use Planning and Approvals Act (1993)* include promoting sustainable development “which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety.”

In jurisdictions where the advancement of health is not an objective of planning laws, it is often mentioned in subordinate instruments and policy documents,<sup>31</sup> but is not on an equal footing with economic and environmental considerations when policy objectives and priorities are weighed by planning authorities and courts. This leaves local governments and communities powerless to oppose proposed developments on the grounds they may promote unhealthy behaviors, relying instead on other sections of planning legislation which do not necessarily reflect the community’s real concerns accurately or comprehensively.

### 3. LOCAL GOVERNMENT’S LEGAL RESPONSIBILITY FOR PUBLIC HEALTH

The role of local governments in promoting public health has been recognised. In Victoria, the state parliament enacted the *Public Health and Wellbeing Act 2008*, requiring each local council in Victoria to develop a Municipal Public Health Plan outlining action to prevent or minimise public health risks and promote health and wellbeing. Similarly, South Australia’s *Public Health Act 2011* and Western Australia’s *Public Health Act 2016* set preventative health objectives including encouraging “individuals and communities to plan for create and maintain a healthy environment.”<sup>32</sup> These laws mark a shift in responsibility, increasing local government’s accountability for delivering targeted preventative health initiatives in communities.

### 4. THE NEED FOR LEGISLATIVE REFORM<sup>33</sup>

Local governments have become leaders in developing tailored policies to improve local health within their communities. However, their efforts to shape healthy food environments can be undermined by planning laws that are not aligned with preventative health priorities.

Planning litigation involving communities that are opposed to proposed placement of fast food outlets is illustrative of the problem.<sup>34</sup> In early 2013 the Yarra Ranges Shire Council refused planning permission for a new McDonald’s outlet in Tecoma in Melbourne’s east. The council acted consistently with the sentiment of the local community, having received 1,300 objections from local residents in opposition to the development, on grounds including the health implications of a fast food outlet in the immediate vicinity of a primary school and childcare centre.

McDonald’s sought review in the Victorian Civil and Administrative Tribunal (VCAT), which applied the regulations - considering the local planning scheme and the *Planning and Environment Act* and noting that concerns about the health impacts of a fast food outlet were not relevant considerations under the

regulations.<sup>35</sup> The council's refusal was overturned, resulting in a prolonged and disruptive campaign of community activism at the site. Similar outcomes have been seen around in Victoria.<sup>36</sup>

Similarly in Western Australia in 2017 a community in Guildford opposed a proposed McDonald's outlet, which was to be located 100 metres from the local primary school and in a heritage precinct. Although the community succeeded in convincing the local council to refuse the application by McDonald's, the fast food chain has appealed the decision to the State Administrative Tribunal which will, like VCAT, consider the legal basis for the application rather than the community's concerns.<sup>37</sup>

The decision of the South Australian Planning and Environment Tribunal in *Paczek & Anor v City of Charles Sturt & Anor* [2012]<sup>38</sup> is unique in Australia, with the Tribunal receiving expert evidence as to the potential health impacts of a proposed McDonald's. The evidence was admitted because the zoning meant a permit was required, and the local planning instrument provided that development impacting the interface between different land uses should be concerned to "protect community health and amenity."<sup>39</sup> The Tribunal therefore heard from several expert witnesses from both parties regarding the health impacts of McDonald's on the community, including noting that the local council was a participant in South Australia's Obesity Prevention and Lifestyle Program ('OPAL'), through which government funded programs support children to be healthy through good diets and active lifestyles.<sup>40</sup> The Tribunal balanced this evidence, noting a "philosophical difference" between the witnesses in identifying the policy implications of the slightly mixed evidence on fast food outlet proximity and obesity, and the community's arguments on this ground were not accepted.<sup>41</sup>

These examples illustrate the need for an analysis of planning law and changes to clarify the relationship between public health and planning in states such as South Australia, Western Australia and Victoria, where responsibility for preventative health is devolved to local councils. In states where such laws do not exist, the steps to prioritise public health in planning legislation rather than through less effective program or policy-based measures is necessary to ensure local councils may fully consider evidence of

health impacts, giving them the same consideration as environmental impacts.

The enactment of reforms to prioritise health in planning law has been considered by some state governments yet to adopt reforms. The Victorian government held an Inquiry into Environmental Design and Public Health in Victoria (Inquiry)<sup>42</sup> which received a large number of submissions from local councils, with wide consensus that planning laws lack consistency with public health initiatives, and require amendment for clarification.<sup>43</sup> Such amendment has however not yet been made. NSW proposed including a new objective directed to promoting health in built environments in draft amendments to planning legislation in 2013, however these amendments stalled and the objective was not included in the legislation eventually introduced in 2017.

## 5. WHAT ARE THE OPTIONS FOR LAW REFORM? <sup>44</sup>

### (a) Health as an objective of planning law

To ensure the health effects of proposed developments and land uses are able to be considered alongside economic, environmental and sustainability considerations, the objectives of planning legislation should be expanded to explicitly state that objectives of planning law include the promotion of health. Such an objective may include *promoting, as far as possible, environments that protect and encourage public health and wellbeing, including active lifestyles and healthy diets*. This objective would allow health considerations to diffuse through the hierarchy of instruments governing the system.

### (b) Empowerment of local governments to influence fast food outlet placement and density

The issues of lack of local government influence over health-impacting decisions such as fast food placement could be addressed by empowering local governments with a mechanism for limiting the



oversupply of fast food outlets in their communities, while facilitating the supply of healthy foods.<sup>45</sup>

Appropriate mechanisms would not necessarily require amendment of the principal legislation, and could be achieved by amending state-level policy documents such as, in Victoria, the Victorian Planning Provisions.

The Victorian Planning Provisions (the Provisions), which are the key subordinate planning instrument, contain a menu of provisions from which local governments may develop their local planning schemes. Amendment to allow flexibility to local councils in controlling fast food outlets could involve changes to the Provisions including zoning amendments to require permits for all fast food outlets regardless of zone. The provision relating to convenience restaurants (52.20) could be broadened, to require that factors may be weighed including the proximity of nearby schools, levels of overweight, obesity, NCD or other diet and lifestyle related health markers in the local community and the number and density of other fast food outlets in the local area, where relevant to health as well as other considerations. This would allow individual councils much greater control over the placement of fast food outlets in their communities without imposing a ban. It would allow flexibility to permit outlets in situations where there are no schools or children's venues that may be negatively impacted by the outlet and it is considered, on balance, appropriate. Community satisfaction with planning decisions may also be enhanced as community views will be better represented in decision making, through the enhanced influence of local government.

An alternative option providing less power to local governments, would be to develop guidelines under relevant planning legislation, setting state-wide policy objectives of applying considerations of health when considering fast food planning applications. This would be simpler, and would not require legislative amendment, while still allowing councils some degree of control over the placement of fast food outlets, relevant to health considerations in their local communities.

## 6. WHAT ABOUT EXCLUSION ZONES AROUND SCHOOLS?

From time to time, exclusion zones around schools are proposed as one possible mechanism to reduce the impact of fast food outlets on children's diets.<sup>46</sup> Although this represents another viable way to reduce the potential harms from chain fast food, such an approach does not allow local governments flexibility to make nuanced decisions around such premises that take into account *all* the different local needs, nearby features and community demographics.

### About the Obesity Policy Coalition

The Obesity Policy Coalition (OPC) is a coalition between the Cancer Council Victoria, Diabetes Victoria and the Global Obesity Centre at Deakin University, a World Health Organization Collaborating Centre for Obesity. The OPC advocates for evidence-based policy and regulatory change to address overweight, obesity and unhealthy diets in Australia, particularly among children.

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