

Consultation Paper for a Front of Pack Labelling Policy Guideline 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 Coalition is concerned about the escalating rates of overweight and obesity in Australia, particularly in children.

The OPC thanks the Food Regulation Standing Committee (FRSC) for the opportunity to comment on its Consultation Paper for a Front of Pack Labelling Policy Guideline (Consultation Paper).

Executive Summary

The OPC is concerned that the current food labelling requirements under the *Australia New Zealand Food Standards Code*, and the voluntary front of pack labelling schemes currently used by some food¹ manufacturers, can be confusing and are inadequate to guide consumers towards healthier food choices. There is significant evidence that improved nutrition labelling would enable consumers to make healthier choices and could reduce rates of overweight and obesity. Consumers want a simple and easy to use front of pack labelling (FOPL) scheme and the evidence clearly demonstrates that consumers (including those in lower socio-economic and culturally diverse groups) would benefit most from a non-interpretive colour coded FOPL scheme, such as a traffic lights labelling scheme.

The OPC strongly recommends the adoption of a simple and easy to use FOPL scheme incorporating an interpretive colour coded (traffic light) scheme.

Key considerations for a draft Ministerial Policy Guideline

The OPC agrees with the key considerations for a draft Ministerial Policy Guideline identified in the Consultation Paper. However we would encourage FRSC, when developing its policy guideline, to also give consideration to how any FOPL scheme would be evaluated, the necessary consumer education requirements and the regulatory framework that would underpin it.

Consumers should be supported to enable them to compare foods consistently across the whole food supply and within food categories. The OPC supports a FOPL scheme based on individual nutrient criteria, recognising that these may need to be modified for the different food groups in the Australian and New Zealand dietary guidelines. Consistent with these dietary guidelines, any food specific nutrient criteria could identify, as relevant, the total fat, saturated fat, salt/sodium and extrinsic sugar content of foods, plus any nutrients established to have a significant public health benefit. Levels of the key nutrients listed should be based on 100ml/g quantities and not standard or recommended 'serving sizes'.

Aims of FOPL

The OPC supports each of the proposed aims of a FOPL scheme as outlined in the Consultation Paper. A FOPL scheme should be meaningful across all population groups and primarily aim to educate consumers to enable them to make healthier food choices. However, we would encourage FRSC to expand the aims (or Specific Policy Principles) to be included in its policy guideline to include that a FOPL scheme should aim to:

¹ In this submission, all references to 'food' include food and beverages unless otherwise stated.

- (1) Reduce demand for, and the consumption of, unhealthy food.

A scheme that encourages consumers to eat more nutrient rich products (i.e. fruit and vegetables) AND guides consumers away from energy-dense and nutrient-poor foods will have the greatest impact on the health of consumers and the currently high rates of obesity and overweight in Australia.

- (2) Reduce the capacity of packaging and labelling to create an overall potentially misleading impression that a product is healthy.

Food regulation in Australia is currently failing to protect consumers, particularly children, from food manufacturers' potentially misleading practice of promoting certain nutritional benefits of a product on packaging, while failing to disclose (other than on the NIP) other product characteristics which make it unhealthy overall. This practice impacts upon the capacity of consumers to make informed food choices and may drive the consumption of unhealthy foods. To be effective, a FOPL scheme must aim to quickly correct any inaccurate overall impressions that may result from the use of selective claims of food packaging.

The current FOPL schemes being used by some food manufacturers in Australia are unable to achieve the aims of a FOPL scheme outlined in the Consultation Paper. In particular, the non-interpretive percentage daily intake (%DI) scheme currently being used by some manufacturers is grossly inadequate and may mislead consumers. Our specific concerns about the current %DI scheme are that:

- It creates an overall impression that the %DI information applies to all persons, regardless of age, sex and other factors;
- The percentage daily intakes are based on varying and smaller than likely "serving sizes" to make products appear healthier;
- It is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes; and
- It combines 'intrinsic' and 'extrinsic' sugars.

A non-interpretive %DI scheme should not be considered a suitable basis for, or to co-exist with, any potential FOPL scheme.

To achieve the aims of a FOPL scheme, a single, mandatory and uniform scheme will be required. The scheme will need to be supported by a clear and comprehensive regulatory framework that is enforceable and is enforced, and a robust penalty system will need to apply. Compliance with any FOPL requirements should be actively monitored and enforcement of the scheme should not rely solely on consumer complaints. The regulatory framework should also provide for the mandatory review of the framework and effectiveness of any FOPL scheme.

Policy Options

The OPC strongly supports Policy Option 4 identified in the Consultation Paper, that the policy guideline should give guidance that a colour coded interpretive scheme should be introduced in Australia and New Zealand.

The OPC strongly supports the introduction of a colour coded interpretive traffic light labelling scheme given the overwhelming evidence of its capacity to guide all consumers (including those from lower socio-economic and culturally diverse backgrounds) towards

healthier food choices. A traffic light system also has the capacity to correct any misleading overall impressions that may arise from selective claims made on food packaging.

The OPC strongly supports a traffic light system based on individual nutrient criteria. It would also support consideration being given to an individual nutrient criteria being complemented by an additional overall traffic light (which integrates the nutrient criteria in a similar way to the nutrient profiling system being used for defining the eligibility of food to make health claims).

Given that foods which contribute most to unhealthy diets should be subject to FOPL requirements, any FOPL scheme should extend to foods sold by fast food chains. Front of Pack labels should be required on fast food packaging and adapted and required to be displayed on menus and menu boards.

While the introduction of a FOPL scheme will result in some cost to government, the food industry and consumers, this will be outweighed by a healthier national diet, its public health benefit and its potential to reduce the future economic costs of obesity. Consumers want and are entitled to information that is accurate and guides them towards healthier food options. Given any costs incurred by the food industry are likely to be passed on to consumers, their interests in a sound FOPL scheme should be paramount.

1 Introduction

The prevalence of overweight and obesity in Australia, including among children and adolescents, has reached alarming levels and continues to escalate. This is a serious public health problem that requires urgent attention from all Australian governments and regulators. If appropriate action is not taken to reduce rates of overweight and obesity, Australia will face significant public health and economic consequences.

Nutrition labelling on product packaging is well recognised as an important component in helping consumers to make healthier food² choices.³ Improving and simplifying the information available to consumers has the potential to improve consumer understanding of the contribution that different foods make to their diet. In turn, this can stimulate changes in patterns of food choice that can ultimately lead to improved population health.⁴ It can also provide an incentive to food manufacturers to reformulate their products to make them healthier.

The OPC therefore welcomes the agreement by the Ministerial Council that the Food Regulation Standing Committee (FRSC) should develop a draft policy guideline on FOPL for its consideration at its May 2009 meeting. We are grateful for this opportunity to comment on FRSC's Consultation Paper for a Front of Pack Labelling Policy Guideline (Consultation Paper) and commend the FRSC Working Group for its comprehensive review of the evidence that supports the need for a single, mandatory and uniform Front of Pack Labelling (FOPL) scheme in Australia.

A. Background information

2 The problem of overweight and obesity in Australia

In Australia, rates of overweight and obesity have increased over time and in all age groups, with the increase most marked in the category of obese adults.⁵

In 2003, the Australian Institute of Health and Welfare estimated that there may be as many as 3.3 million Australian adults who are obese and 5.6 million who are overweight.⁶ In 2008, 3.71 million Australians were estimated to be overweight, comprising 1.76 males (16.5% of all males) and 1.95 million females (comprising 18.5% of all females).⁷ The prevalence of overweight and obesity in Australian children and adolescents has also reached critical levels and continues to escalate.⁸ On conservative estimates, at least 23% of Australian children and adolescents are overweight or obese, and at least 6% of these are obese.⁹

² In this submission, all references to 'food' include food and beverages unless otherwise stated.

³ Rayner M, Boaz A, Higginson C. Consumer use of health-related endorsements on food labels in the United Kingdom and Australia. *J Nutr Educ* (2001) 33(1), 24 – 30.

⁴ Cowburn G, Stockley L. Consumer understanding and use of nutrition labelling: a systematic review. *Public Health Nutr* (2005) 8, 21 – 28.

⁵ Australian Bureau of Statistics. Overweight and Obesity in Adults. 2004-05. Cat No 4719.0 Australian Bureau of Statistics, Canberra, 2008; Linares S. Overweight and Obesity. Canberra, Australian Bureau of Statistics. 2007.

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

⁷ Access Economics. The growing cost of obesity in 2008. August 2008. Canberra: Diabetes Australia.

⁸ Margarey, A.M., Daniels, L.A., & Boulton, T.J. Prevalence of overweight and obesity in Australian children and adolescents: reassessment of 1985 and 1995 data against new standard international definitions. *Medical Journal of Australia* (2001) 174, 561-564; Swinburn, B. & Bell, C. Results of a weight survey of primary school children in the Sentinel Site for Obesity Prevention (2003) Victoria, Melbourne: Deakin University; Goodman, S., Lewis, P.R., Dixon, A.J., & Travers, C.A. 'Childhood obesity: of growing urgency.' *Medical Journal of Australia* (2002) 176, 400-401; Goodman, S., Lewis, P.R., Dixon, A.J., & Travers, C.A. 'Childhood obesity: of growing urgency.' *Medical Journal of Australia* (2002) 176, 400-401; Booth, M., Okely, T., & Denney-Wilson, E. et al. NSW

It has also been conservatively estimated that the number of Australians who are obese will grow to 4.6 million (18.3% of the population) by 2025.¹⁰ However, if obesity continues to increase at historical rates, as many as 6.9 million Australians could be obese by 2025.¹¹

Overweight and obesity are responsible for a large proportion of the burden of disease in Australia and in 2003 were estimated to cause 7.5% of the total burden, the second leading single cause after tobacco.¹² Men and women in lower socio-economic groups are more likely to be overweight and obese than those in higher socio-economic groups.¹³ Obese adults carry an increased risk of many chronic diseases, including type 2 diabetes, cardiovascular disease and some cancers.¹⁴ Children and adolescents who are overweight or obese are likely to suffer from a range of serious health and psychosocial problems, they are also more likely to become obese adults.¹⁵

The financial and non-financial costs of overweight and obesity are also significant.¹⁶ A recent report on the economic costs of obesity estimated that the total cost of obesity in Australia in 2008 was \$58.2 billion, comprising \$8.3 billion in financial costs and \$49.9 billion in net costs of lost wellbeing.¹⁷ The estimated \$8.3 billion in financial costs included \$3.6 billion in lost productivity, \$2.0 billion in direct financial costs to the health system and \$1.9 billion in costs borne by carers (plus \$76 million in indirect costs). It should be noted that this report was based on the cost of obesity alone and did not take into account the cost of overweight. In the long term, it is expected that the economic costs of obesity will increase significantly, and possibly double, due to the prevalence and incidence of diabetes.¹⁸ This suggests that the economic burden is not only significant, but is likely to get worse even if there is no further growth in the prevalence of obesity.

As recognised by FRSC, no one intervention will combat the problem of obesity and overweight. A strong and comprehensive approach, addressing the social, physical and economic determinants of obesity and overweight will be required from federal, state, and local government, schools, community organisations, the medical community, food industry and others. The solution will require bold regulatory reforms and a range of policies, projects and programs.

Schools Physical Activity and Nutrition Survey (SPANS) 2004: Summary report. New South Wales Department of Health, 2006.

⁹ Dept of Health and Ageing, Australian Food and Grocery Council, Dept of Agriculture, Fisheries and Forestry. *2007 Australian National Children's Nutrition and Physical Activity Survey*. Commonwealth of Australia. 2008. Available at <http://www.health.gov.au/internet/main/publishing.nsf/Content/health-publth-strateg-food-monitoring.htm#07survey>

¹⁰ Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia

¹¹ Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.

¹² Begg S, Vos T, Barker B, Stevenson C, Stanley L, Lopez A. *The burden of disease and injury in Australia 2003*. Canberra, Australian Institute of Health and Welfare. 2007

¹³ Australian Institute of Health and Welfare. *Are all Australians gaining weight? Differentials in overweight and obesity among adults, 1989 – 90 to 2001*. Bulletin 2003. Available at <http://www.aihw.gov.au/publications/aus/bulletin11/bulletin11.pdf>

¹⁴ World Health Organization. *Obesity: Preventing and Managing the Global Epidemic*. Report of a WHO Consultation. WHO Technical Report Series no. 894. 2000, WHO: Geneva.

¹⁵ World Health Organisation. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation*. WHO Technical Report Series no. 894. 2000, WHO: Geneva; Must, A., & Strauss, R.S. 'Risks and consequences of childhood and adolescent obesity.' *International Journal of Obesity Related Metabolic Disorder*, (1999) 23 Suppl 2, S2-11.

¹⁶ The financial costs of overweight and obesity include direct financial costs to the health system, productivity losses and carer costs. Non-financial costs of overweight and obesity include disability, loss of wellbeing and premature death.

¹⁷ Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.

¹⁸ Department of Economic and Social Affairs. *World economic and social survey 2007. Development in an ageing world*. New York: United Nations; 2007. Vos T, Goss J, Begg S, Mann N. *Projection of health care expenditure by disease: a case study from Australia*. Brisbane: School of Population Health, University of Queensland; 2007.

3 Current nutritional labelling requirements and the need for a FOPL scheme.

The *Australia New Zealand Food Standards Code* (Code) currently requires the inclusion of a Nutritional Information Panel (NIP) on all packaged foods, with the exception of very small packages, foods that are packaged on the premises from which it is sold and foods that are packaged in the presence of the food purchaser.¹⁹ The NIP is typically placed on one side or the back of the food package, and is not readily visible to consumers at the point of sale.

Research has found that consumers can find NIPs confusing²⁰ and difficult to interpret²¹. Food labelling reforms are required in Australia to reduce the detailed information contained in NIPs to simple front-of-pack information all consumers can easily understand and use to quickly assess the nutrient content of foods and whether they are healthy.

The Code currently provides that information relating to the percentage daily intake (%DI) of certain nutrients may voluntarily be displayed in the NIP.²² The Code requires the %DI of nutrients identified in the NIP to be based on an average adult diet of 8700KJ. A %DI FOPL scheme was introduced by the Australian Food and Grocery Council in 2006 and is now used by a number of food manufacturers. We have significant concerns about the %DI scheme, including that it is difficult to use and may confuse and mislead consumers into making unhealthy food choices. A detailed discussion of our concerns about the %DI scheme is contained in paragraph 6.2.2.

A number of other FOPL schemes, developed by non-government organisations and the food industry, are 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'. These endorsements are not of themselves adequate to guide consumers towards healthier food choices. Our concerns about these FOPL schemes are outlined in paragraph 6.2.1.

The current absence of a uniform scheme that is easy to use can cause confusion among customers, particularly consumers from lower socio-economic and culturally diverse groups. A clear, single, mandatory, uniform colour coded interpretive FOPL scheme, such as a traffic light scheme, is urgently required to enable consumers to make healthier food choices.

4 The evidence base for a FOPL scheme

The papers prepared by the FRSC FOPL Working Group (Attachments 2 and 3 to the Consultation paper) demonstrate the significant amount of evidence that now exists in Australia and overseas on FOP food labelling. This evidence clearly demonstrates that:

- Consumers would support the introduction of a simplified FOPL scheme.
- A simple and easy to use FOPL scheme would enable consumers to make healthier food choices 'at a glance' and would be consistent with the goals of existing healthy eating strategies.

¹⁹ *Australia New Zealand Food Standards Code*. Standard 1.2.8 and 1.2.1.

²⁰ Byrd-Bredbenner C, Wong C, Cottee P. Consumer understanding of US and EU nutrition labels. *British Food Journal* (2000) 102:615-29; Feunekes GI, Gortemaker IA, Willems AA, et al. Front-of-pack nutrition labelling: testing effectiveness of different nutrition labelling formats front-of-pack in four European countries. *Appetite* (2008) 50:57-70; Cowburn G, Stockley L. Consumer understanding and use of nutrition labelling: a systematic review. *Public Health Nutr* (2005) 8:21-8.

²¹ Jones G, Richardson M. An objective examination of consumer perception of nutrition information based on healthiness ratings and eye movements. *Public Health Nutr* (2007) 10:238-44.

²² *Australia New Zealand Food Standards Code*. Standard 1.2.8, cl.7.

- Implementation of a FOPL scheme would need to be widely supported by an education/public awareness campaign and healthy eating initiatives.
- A simple interpretive colour coded FOPL scheme, such as a traffic light labelling scheme:
 - would enable consumers from lower socio-economic groups and diverse backgrounds to make healthier food choices.
 - is likely to be easier to interpret and less confusing than a non-interpretive FOPL scheme, such as a percentage daily intake scheme.
 - would be consistent with and support Australia and New Zealand Nutrient Reference Values and dietary guidelines.
 - may encourage food manufactures to reformulate the nutritional composition of their food to meet the nutrient criteria levels.

The CCA in its submission has identified some further research and studies undertaken subsequent to the FRSC FOPL Working Group's deliberations. We will not reproduce those findings in this submission but would note that we agree with the concerns raised by CCA about the research conducted by the National Heart Foundation²³ and the Australian Food and Grocery Council²⁴. In particular, we would emphasise that while the Australian Food and Grocery Council have announced research demonstrating consumer awareness of and perceptions about %DI labelling, it has produced no evidence to demonstrate whether consumers truly understand %DI labels, whether these labels actually influence consumers to make healthier food choices or whether these labels have any impact on what consumers eat and drink.

We would also like to highlight the findings of the research conducted by a collaboration of leading public health and consumer organisations in Australia, including the OPC, in 2008.²⁵ This research provides very strong evidence that:

- Consumers support the introduction of a single and consistent FOPL scheme.
- Traffic light labelling is the best system to help consumers make healthier food choices.
- Consumers in lower socio-economic groups are less likely to correctly interpret a monochrome %DI labelling system than a traffic light labelling system.

Two further studies that have been conducted since the FRSC FOPL Working Group's deliberations demonstrate the very high level of public support for an interpretive colour-coded traffic light labelling scheme in Australia and the need for simple, clear, mandatory and uniform food labelling laws. These studies comprise a public opinion survey conducted by the Centre for Behavioural Research in Cancer, Cancer Council Australia and a systematic review and report on food, nutrition, physical activity and the prevention of cancer by the World Cancer Research Fund and the American Institute for Cancer.²⁶

²³ Heart Foundation. Australians and front of pack labelling. 2008. Available at <http://www.heartfoundation.org.au/SiteCollectionDocuments/Tick%20HeartFoundation%20Research%20Summary%20FOPL.pdf>

²⁴ Australian Food and Grocery Council. Nutritional labelling: The daily intake guide. 2008. Available at: <http://www.afgc.org.au/cmsDocuments/Fact%20Sheet%20Survey.pdf>

²⁵ 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 <http://www.cancercouncil.com.au/editorial.asp?pageid=2456>

²⁶ 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; 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/>

4.1 Public opinion data – Centre for Behavioural Research in Cancer, Cancer Council Victoria

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.²⁷

This study (of a random sample of 800 adult consumers who were the main grocery buyer, residing in private households in metropolitan and regional areas across all Australian states) found that just over 9 in every 10 consumers (91%) were in favour of government requiring food companies to provide colour-coded traffic light labelling on the front of packaging to show whether the levels of fat, sugar and salt are high, medium or low, with just over 2 in 3 (68%) being strongly in favour. More than 8 in 10 consumers were in favour of food and drink chains listing nutritional information on menu boards (with 62% being strongly in favour). More than 8 in 10 consumers were also in favour of displaying this information using colour-coded traffic light labelling (with 58% being strongly in favour).²⁸

This paper describing this study is not currently available for public circulation however we would be pleased to provide FRSC with further information about the study, its findings and the methodology used on its request.

4.2 The World Cancer Research Fund and the American Institute for Cancer Research's reports on food, nutrition, physical activity and the prevention of cancer.

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.²⁹ Following a comprehensive systematic review of the evidence pertaining to the effectiveness of a range of existing interventions worldwide, including food-labelling schemes, the WCRF and AICR recommended, among other things, that governments act to introduce clear, mandatory and uniform food labelling requirements.

Their systematic review of the evidence found 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.³⁰ The WCRF and AICR were satisfied that changes to labelling systems are not expensive and can be put in place 'fairly quickly'.³¹

²⁷ 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.

²⁸ Ibid p. 5.

²⁹ 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/>

³⁰ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.61 – 63.

³¹ Ibid, p.63

B. Responses to questions raised in the Consultation Paper

The OPC is grateful for this opportunity to respond to the questions raised in the Consultation Paper. We note that we have read the Cancer Council Australia's submission and generally share its views, as identified in our submission below.

5 Key Considerations for a draft Ministerial Policy Guideline

5.1 Do you agree with the key considerations identified above? Why or why not?

The OPC agrees with the key considerations for a draft Ministerial Policy Guideline identified in the Consultation Paper.

We welcome the Terms of Reference of the FRSC Working Group, to develop a Policy Guideline on FOPL and agree a focus on guiding consumer choice to healthier food options should underpin its development. We also agree that the draft policy guideline should be evidenced based and provide guidance on the aims of FOPL and the issues to consider when developing a FOPL scheme.

We welcome the consideration that has been given by FRSC to FOPL schemes already in use in Australia, New Zealand and internationally. We agree that evidence about the current schemes should feed into the development of the Policy Guideline, however agree with CCA that due consideration must be given to the quality of this research. Higher emphasis must be placed on independently conducted research, with transparent research methodology and findings and those that stand up to peer review.

We encourage the Working Group to exercise the option provided in the Terms of Reference, to include in its draft Policy Guideline, guidance on whether a regulatory or non-regulatory approach should be taken and how nutrients and foods should be chosen for a FOPL scheme. Our views on why the Working Group should exercise this option, why a regulatory approach is required, and how nutrients and foods should be chosen, are discussed below in paragraphs 7, 6.4 and 5.4 respectively.

We agree that consideration will need to be given to the existing requirement for NIPs on food packaging if a FOPL scheme is introduced. We are of the strong view, however, that nutritional information panels should continue to be required to ensure that consumers may be provided with more detailed nutritional information, as well as information about nutrients not referred to on the front of pack label. This is particularly important for consumers with specific dietary requirements or illnesses. A FOPL scheme should aim to provide 'at a glance' nutritional information only.

We are aware of *Proposal P293: Nutrition, Health and Related Claims* and that it will impact upon health and nutrition claims permitted to be made on food packaging.³² We are also aware that, on 24 October 2008, the Ministerial Council agreed in principle to commission an independent, comprehensive review of food labelling law and policy, to be undertaken by an independent expert panel. We agree that should development of a FOPL scheme proceed, its impact on matters contained in Proposal P293 will need to be considered. We also agree that consideration may need to be given to any information that becomes available from the expert panel's food labelling law and policy review. However, we strongly urge FRSC and the

³² The OPC's concerns about Proposal P293 are outlined in its submission to FSANZ on its 'Preliminary Final Assessment Report Proposal P293: Nutrition, Health and Related Claims'. Available at <http://www.opc.org.au/browse.asp?ContainerID=submissions>

Ministerial Council to ensure that public comment is invited on any potential impacts or issues identified.

As you know, in 2008 the Preventative Health Taskforce (Taskforce) released its Discussion Paper 'Australia: the healthiest country by 2020' and its supporting Technical Paper 'Obesity in Australia: a need for urgent action'.³³ In these documents, the Taskforce recommended improvements to food labelling requirements in Australia to support healthier food choices, including that labelling requirements should apply to food purchased when eating out. Accordingly, information that becomes available from the Taskforce and its recommendations will also need to be considered by FRSC and the Ministerial Council.

Finally, consideration should be given to the agreement reached by Group 1 (Healthy lifestyles, health promotion and disease prevention) at the Australia 2020 summit that "food content should be regulated and a 'traffic light' system should be used in food labelling". Group 1 agreed that traffic light labelling could be an immediate and cost neutral policy option for enabling people to make healthier food choices.³⁴

5.2 *Are there other key considerations that should be taken into account when developing this policy guideline? If so, please provide details of what should be considered and why.*

The OPC agrees with CCA, that the Policy Guideline should also address evaluation plans, consumer education requirements and a regulatory framework.

Evaluation plans are essential to determine the reach and impact of any FOPL scheme, including compliance with the scheme by food manufacturers. Base-line data should be collected and a range of short and long term measures should be identified. Short-term measures may include changes in consumer knowledge of nutrient information and the FOPL scheme, and any changes this knowledge has had on their food shopping behaviour and food consumption. Long-term measures may relate to the impact any FOPL has had on food choices and the incidence and prevalence of overweight, obesity and chronic disease.

FOPL cannot be implemented in isolation. Consumer education requirements to accompany the introduction of any FOPL scheme, to inform consumers of how to interpret the labelling system, will be essential. As recognised by the FRSC Working Group (in Attachment 3 to the Consultation Paper), there is considerable evidence that consumer use and understanding of nutritional labelling concepts increase with education.

The OPC is of the very strong view that any FOPL scheme will need to be mandatory to ensure its effectiveness. Accordingly, consideration should be given to the appropriate regulatory framework that will underpin its implementation. It will be essential that any regulatory framework provides clear FOPL obligations and stringent requirements for compliance monitoring and enforcement, together with robust penalties. A detailed discussion of why any FOPL scheme must be mandatory, and the necessary requirements of any regulatory framework, are outlined below in paragraph 6.4.

³³ Available at <http://www.preventativehealth.org.au/>

³⁴ Australia 2020 Summit - Final Report. Published by the Department of the Prime Minister and Cabinet. Commonwealth of Australia. Available at http://www.australia2020.gov.au/docs/final_report/2020_summit_report_full.doc

5.3 Do you consider that consumers should be supported to enable them to be able to compare foods consistently across the whole food supply or within a food category? Why? Why not?

There are inherent positives and negatives of having no categories (thus enabling comparisons across all foods and beverages) and having many categories (thus enabling comparisons within food categories). Clearly comparing foods with beverages makes no sense because of the high water content of beverages - there will need to be separate criteria for these. No system will be free of all anomalies, emphasizing the need for a substantial community education and awareness communications program. We share the concerns of the CCA, that there is a lack of research to describe how consumers use nutritional labels in practice. We agree that further research may be required to determine if consumers use nutritional labels to compare food products within food categories or between food categories. While it is most likely that consumers will use FOP labelling to compare products within the same food category, it is also possible that they will use them to compare foods across different food categories. There will be substantial experience gained in other countries such as the UK where these systems have been operating for some time.

5.4 Do you consider that the information provided should relate to individual nutrients, whole foods, other? Please provide details of the information considered important and why. Why not?

The OPC believes that any FOPL scheme should require the display of a FOP label on all products currently required to display a NIP. As discussed below in paragraph 7.3.1, we believe that any FOPL scheme should also extend to foods sold by fast food chains.

Any FOPL scheme should be based on individual nutrient criteria, potentially with different criteria applied to different food groups. These food groups could reflect the Australian and New Zealand Dietary Guidelines with its core food groups, including breads, cereals, rice, pasta and noodles; vegetables and legumes; fruit; milk, yogurt and cheese; lean meat, fish, poultry, eggs and nuts; and fats and oils. An additional food group for 'extra foods' would also be required.

As set out by CCA, any category specific nutrient criteria should take into account properties unique to that food group, and set benchmarks or standards that are appropriate to the nutritional composition. We share the views of CCA that the use of separate nutrient criteria for different food groups will help to avoid the misclassification of foods and may encourage product reformulation.

Reflecting the Australian and New Zealand dietary guidelines, food category specific nutrient criteria should identify, as relevant to the given food category, the total fat, saturated fat, salt/sodium and sugar ('intrinsic' and 'extrinsic', see below) content of foods. The inclusion of other nutrients may also be considered for FOP labels, in certain food categories, if they are established to have a significant public health benefit.

Levels of key nutrients identified on FOP labels should be based on 100ml/g quantities and not standard or recommended "serving sizes" set by the food industry or FSANZ (a person's likely serving size may vary significantly depending on a range of factors, such as their age, gender and weight – see further discussion below at paragraph 6.2.2). Further research may be required into how any FOPL scheme may be best adapted to foods consumed in small quantities to ensure that they are not disadvantaged.

We agree with CCA that consideration should also be given to the inclusion of kilojoule contribution on FOP labels, as energy is directly related to body weight, with additional consumer education provided to highlight the meaning and importance of energy intake.

We would also urge that consideration be given to permitting only 'extrinsic' sugars to be displayed on any FOP label. In Australia, the Dietary Guidelines for Australian Adults differentiate between 'intrinsic' (i.e. naturally occurring sugars) and non-milk 'extrinsic' or 'refined' sugars (i.e. added sugars).³⁵ Extrinsic or free sugar provides the consumer with energy but no specific nutrients. A restriction in extrinsic or free sugar consumption is likely to reduce the risk of unhealthy weight gain without compromising micronutrient intakes.³⁶ It is therefore important that consumers receive accurate information about the proportions of extrinsic sugars in their food. If all sugars are treated in the same way, consumers of products containing solely or predominantly extrinsic sugar may potentially be misled about their recommended dietary intake. If a traffic light system is introduced, the identification of only extrinsic sugar will prevent some fruits and dairy products (that can have high levels of intrinsic sugars) appearing less healthy than, for example, certain cereals or soft drinks.

Finally, if such a traffic light or similar colour coded interpretive scheme is introduced, the number of ml/grams of key nutrients should also be included on the FOPL label to enable consumers to directly and more precisely compare the key nutrient content between and across different food groups.

6 Aims of FOP labelling

6.1 Are there other aims that should be considered? Please provide details of other aims and why they should be considered

The OPC strongly supports each of the proposed aims of a FOPL scheme as outlined in the Consultation Paper and identified within the Specific Policy Principles of the Preliminary Draft Policy Guideline. A FOPL should be meaningful across all population groups and primarily aim to educate consumers and enable them to make healthier food choices. However, we believe that two further aims a FOPL scheme should be identified:

- (1) It should aim to reduce demand for, and the consumption of, unhealthy food; and
- (2) It should aim to reduce the capacity of packaging and labelling to create an overall potentially misleading impression that a product is healthy.

6.1.1 Reduce demand for, and the consumption of, unhealthy foods.

Any regulatory or policy measures to address overweight and obesity should have dual aims of increasing the consumption of healthy foods - together with decreasing consumption of unhealthy foods.

The Preliminary Draft Policy Guideline states that a FOPL scheme should aim to 'guide consumer choice towards healthier food options'. While we unequivocally agree that this should be the primary aim of any FOPL scheme, we would encourage FRSC to also highlight the need for any FOPL scheme to reduce demand for, and the consumption of, unhealthy foods. A scheme that encourages consumers to eat more nutrient rich products (i.e. fruit and vegetables) AND guides consumers away from energy-dense and nutrient-poor foods will have the greatest impact on the health of consumers and the currently high rates of obesity and overweight in Australia.

³⁵ Dietary Guidelines for Australian Adults, endorsed by the NHMRC on 10 April 2003. p.172. Available at <http://www.nhmrc.gov.au/publications/synopses/files/n33.pdf>.

³⁶ 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. Available at: http://www.who.int/nutrition/topics/5_population_nutrient/en/ p.57.

6.1.2 Reduce the capacity of packaging and labelling to create an overall potentially misleading impression that a product is healthy

Section 18(1)(c) of 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 in the Preliminary Draft Policy Guideline.

The OPC believes that further to the High Order Policy Principle, a specific aim of any FOP scheme (or Specific Policy Principle) should be to reduce the capacity of packaging and labelling to create an overall potentially misleading impression that a product is healthy.

The OPC is concerned that food regulation in Australia is currently failing to prevent food manufacturers’ selectively promoting certain nutritional or other characteristics of a product which may be perceived to provide health benefits (such as high calcium content, low fat content or the presence of certain vitamins or minerals), while failing to disclose (other than on the NIP) other characteristics of the product which make it unhealthy overall, such as high sugar or low dietary fibre content. We believe that this practice is likely to mislead consumers by creating an overall impression that a product is ‘healthy’, ‘good for’ or ‘better for’ them. We are concerned that that this practice affects consumers’ ability to make informed choices about foods they purchase and consume, and may drive the consumption of unhealthy foods.

The OPC is aware of many examples of food companies using this practice in product labelling and advertising, including:

- Kellogg’s claims that Coco Pops contains no artificial colours or preservatives, eight vitamins and minerals, including calcium ‘for strong bones and teeth’, but failure to disclose that Coco Pops contain 36.5% sugar and only 1.2% fibre;
- Ferrero’s claims that Nutella has a low GI, is made with milk and provides ‘energy to live and learn’, but failure to disclose that the product contains 30.3% fat and 54.4% sugar;
- Nestle’s claims that Allens ‘Naturals’ lollies are 99% fat free and contain only natural colours and flavours and real fruit juice, but failure to disclose that the lollies contain 63.1% sugar;
- Nestle’s claims that Milo Cereal is a ‘nutritious energy cereal’ and a ‘source of calcium’, containing ‘carbo fuelled energy, 20% wholegrain and 9 essential vitamins and minerals’, but failure to disclose that the cereal contains 31.3% sugar.
- Kellogg’s claims that Nutri-Grain is ‘Iron Man Food’, ‘a good source of six vitamins including folate’, ‘high in calcium, which is needed for strong healthy bones’, ‘high in carbohydrate, which helps provide energy for active people’, ‘high in protein, which helps with growth and maintenance of healthy muscle’, and ‘low in fat’, but failure to disclose that Nutri-Grain contains 32% sugar and only 2.7% fibre.

In our view, this practice constitutes misleading and deceptive conduct in breach of section 52 of the *Trade Practices Act 1974* (Cth), and similar State and Territory consumer protection laws such as section 13 of the *Food Act 1984* (Vic) and section 9 of the *Fair Trading Act 1999* (Vic). Australian courts have accepted that silence or omission of an important fact can constitute misleading or deceptive conduct if the effect of the silence or omission is to create an *overall impression* that is misleading.³⁷ In the context of food packaging and labelling

³⁷ *Demagogue Pty Ltd v Ramensky* (1993) 110 ALR 608; *Warner v Elders Rural Finance Ltd* (1993) 113 ALR 517 at 519-520; *General Newspapers Pty Ltd v Telstra Corporation* (1993) 117 ALR 629 (per Davies and Einfeld JJ at 641-642; per Gummow J at 657-658); *Ramset Fasteners (Aust) Pty Ltd v. Advanced Building Systems Pty Ltd* (1999) 164 ALR 239; *Software Integrators Pty Ltd v. Roadrunner Couriers Pty Ltd* [1997] ATPR (Digest) 46-177.

however, section 52 of the *Trade Practices Act 1974* has only been enforced by the Australian Competition and Consumer Commission against food packaging displaying information and claims that have been found to be factually false or inaccurate.³⁸ In our view, this constitutes an unduly narrow interpretation of the meaning of misleading and deceptive conduct. The broader jurisprudence would suggest that it is the overall impression created by the totality of food sellers' conduct, in the minds of consumers, that should be relevant to whether conduct is misleading and deceptive.

As discussed below in paragraph 6.2.2, the OPC is also concerned that the voluntary %DI labelling scheme entered into by some food manufacturers in Australia may be giving rise to, or failing to protect consumers from misleading or deceptive food packaging and labelling.

The OPC believes that a colour coded interpretive FOPL scheme (requiring food manufacturers to clearly identify, where relevant to the particular food group, the total fat, saturated fat, salt/sodium *and* sugar content per 100ml/g, plus any other key nutrients with public health significance) has the potential to quickly correct any wrongful impressions given by selective claims that a food is healthy overall. For example, in the event that food packaging highlights the low fat and high calcium content of a high sugar cereal, a consumer could quickly and almost simultaneously be alerted to its sugar content by the red traffic light symbol.

When developing a FOPL scheme, the Ministerial Council should be aware of the issue of selective claims on food packaging and labelling and the need for any FOPL scheme to reduce their capacity to mislead and deceive consumers.

6.2 *To what degree are these aims or any other aims you believe should be considered consistent with or different to current FOPL schemes? Please explain how and why.*

We believe that the aims of a FOPL scheme as outlined in the Consultation Paper and Specific Policy Principles in the Preliminary Draft Policy Guideline are inconsistent with the Percent Daily Intake (%DI) FOPL scheme and the endorsement symbols currently used by some food manufacturers in Australia.

6.2.1 Endorsement symbols

We share the concerns of the CCA that the endorsement symbols currently used in Australia (such as go Grains (4+ serves a day), Heart Foundation (Tick), and the GI symbol) can be overly simplistic and of limited value if licensing fees preclude some companies from applying. We also share the concern that such schemes take an "all or nothing" approach, whereby a product either carries an affirmative label or it does not, with no opposing symbol on less healthy products to inform consumers of their less desirable nutrient profile. Endorsement schemes are inadequate to enable consumers to compare the healthiness of, and nutrients in, foods within and particularly across different food categories.

6.2.2 Percent Daily Intake FOPL scheme

The OPC agrees with the concerns raised by FRSC in its Consultation Paper, that a non-interpretive %DI scheme is unable to achieve many of the aims proposed in the Specific Policy Principles of a FOPL scheme.

³⁸ See for example, ACCC Media Releases: Uncle Tobys stops claims Roll Ups are 'made with 65% real fruit' dated 13 September 2006, available at <http://www.accc.gov.au/content/index.phtml/itemId/762460/fromItemId/720536>; Court declares Arnott's biscuit packaging misleading, dated 29 April 2008, available at <http://www.accc.gov.au/content/index.phtml/itemId/825714>; Go Natural amends 'fruit pieces in yoghurt' packaging, dated 8 April 2008, available at <http://www.accc.gov.au/content/index.phtml/itemId/820182>

As discussed by the FRSC Working Group in Attachment 3 to the Consultation Paper, objective studies conducted in Australia and overseas have consistently found that consumers find %DI and similar non-interpretive schemes confusing and difficult to interpret. The recent study conducted by a collaboration of public health groups in Australia, including the OPC, also found that %DI schemes can be confusing and that they are not as well understood by consumers as interpretive labelling systems such as traffic light labelling.³⁹ This study found that consumers from lower socio-economic groups have significant difficulty using the %DI scheme. Of particular concern, people from the lowest socio-economic groups were found to be six times less likely to identify healthier food products using the %DI scheme than people from high socio-economic groups. Socio-economic status was not associated with consumers' ability to use any of the other FOPL systems, such as the interpretive colour coded traffic light system.

We are also concerned that the monochrome % DI scheme currently being used by some food manufacturers in Australia may be misleading and confusing consumers, particularly children and their parents, rather than assisting them to make healthier food choices. Our specific concerns about the current % DI scheme are that:

- a) It creates an overall impression that the %DI information applies to all persons, regardless of age, sex and other factors;
- b) The percentage daily intakes are based on varying and smaller than likely "serving sizes" to make products appear healthier;
- c) It is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes; and
- d) It combines 'intrinsic' and 'extrinsic' sugars.

- (a) *The % DI scheme creates an overall impression that the %DI information applies to all persons*

Percent DI labels on food products can create an overall misleading impression that the %DI information is relevant to all persons, regardless of age, sex, weight, illness factors and levels of physical activity when in fact, a person's recommended daily intake (of energy and therefore other nutrients) can vary significantly in light of these factors.⁴⁰ The OPC is particularly concerned about the display of %DI information on foods directed to children given their energy and nutrient requirements can be significantly less than an average adult's requirements.⁴¹

We are concerned that this overall misleading impression may lead some consumers, and children in particular, to underestimate the proportion of energy and other nutrients in particular foods and how they contribute to their daily energy requirements. This may in turn lead some people to consume more than they require.

We believe that the 'disclaimer' used on packaging to purportedly address this issue is inadequate to correct the impression that the %DI information relates to all persons. As FRSC would know, under clause 7(2) of Standard 1.2.8 of the Code, where %DI information is included in a nutrition information panel, the following disclaimer must be displayed - '*Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes

³⁹ 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 <http://www.cancercouncil.com.au/editorial.asp?pageid=2456>

⁴⁰ See NHMRC. Nutrient Reference Values for Australia and New Zealand – Including Recommended Daily Intakes. Dept of Health and Aging, Australian Government and Ministry of Health, Manatu Hauora. 9 September 2005. <http://www.nhmrc.gov.au/publications/synopses/ files/n35.pdf>

⁴¹ *Ibid.*

may be higher or lower depending upon your energy needs'. This disclaimer is not required under Standard 1.2.8 where the DI information is displayed on the front of pack only.

The OPC is concerned that even when the disclaimer is included on packaging (whether required under the Code or not), its placement on one side or the back of the pack, its small font size and its vague content (which does not identify whose energy needs may be higher or lower or why) is unlikely to be adequate to correct the impression that %DI information relates to all persons. In particular, consumers are unlikely to know or have any reason to suspect that the disclaimer does not necessarily apply to children, particularly when the disclaimer is displayed on food products directed to them such as Kellogg LCM bars, Kellogg K-Time bars and Nestle Milo bars and cereal. Given adults are unlikely to be the consumers of these products, it may reasonably be expected that parents will presume that the %DI information displayed relates to a child's recommended daily energy and nutrient needs.

(b) *Smaller "serving sizes" make products appear healthier*

There are no standard or recommended serving sizes prescribed in the Code. Standard or recommended serving sizes, on which nutrition information in NIPs⁴² and %DI labels are based, are therefore determined by food manufacturers at their discretion. The %DI information displayed on food packaging containing multiple non-fixed serves, such as breakfast cereals, is commonly based on standard or recommended "serving sizes" which are often much smaller than the amount actually consumed by children and adults. A person's likely serving size may vary significantly depending on a range of factors, such as their age, gender and weight. Recommended or suggested serving size can also vary between food products within the same food category, making it difficult for consumers to compare products within and across food categories. For example, with cereals, a standard serving size of Kellogg's Mini Wheats is stated to be 40g (3/4 metric cup) while a standard serving of Kellogg's Nutri-Grain is stated to be 30g (1 metric cup). As demonstrated by this example, not only do the serving sizes vary between the grams stated to be contained in the standard serving sizes, but the per cup measure can also vary by reason of the weight of the different cereals.

The smaller the serving size attributed to a particular product by the food manufacturer, the healthier the product looks. Research has found that consumers fail to link information about calorie content to the serving size listed, instead tending to think of multiple servings as one serving.⁴³ Accordingly, we are concerned that %DI labels based upon serving sizes have the potential to mislead consumers in relation to the energy and nutrient value of products.

(c) *Percent DI is not calculated in accordance with current Nutrient Reference Values and Recommended Dietary Intakes*

The daily intake for energy currently displayed on %DI labels is 8700kJ, as provided for in the Code. This estimation 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.⁴⁴ It may also no longer reflect an average adult's actual energy consumption.

⁴² Average quantities of nutrients per 100 grams are also required to be displayed on NIPs, *Australia New Zealand Food Standards Code*. Standard 1.2.8, cl.5. There is no requirement to display %DI per 100g.

⁴³ Pelletier AL, Chang WW, Delzell JE Jr, McCall JW. Patients' understanding and use of snack food package nutrition labels. *J Am Board Fam Pract.* (2004) Sep-Oct;17(5):319-23.

⁴⁴ %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

We are also concerned that the recommended % dietary intakes for fat, saturated fat, carbohydrates and sugar may no longer accurately reflect the best available scientific evidence. As you would know, 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.

Even if the percent dietary intakes for fat, saturated fat, carbohydrates and sugar remain mostly accurate, the final percentage displayed on a %DI label may be inaccurate if, as discussed above, %DI labels fail to accurately represent a recommended average daily intake of energy. This is because the recommended % dietary intakes for fat, saturated fat, carbohydrates and sugar are calculated in accordance with the average energy requirement of 8,700KJ.

(d) *It combines 'intrinsic and extrinsic' sugars*

The current %DI scheme combines and fails to differentiate between intrinsic and non-milk extrinsic sugars. As discussed above in paragraph 5.4, the Dietary Guidelines for Australian Adults differentiate between "intrinsic" (i.e. naturally occurring sugars) and non-milk 'extrinsic' or 'refined' sugars (i.e. added sugars) and recommends that people limit their intake of extrinsic sugars.⁴⁵

The World Health Organization (WHO) similarly differentiates extrinsic sugars, which it refers to as "free sugars".⁴⁶ The WHO states 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 %DI labels in Australia (18% of total energy and 90g for an average adult). By combining added and natural sugar, the %DI scheme enables manufacturers to suggest that consumers may consume 90g of extrinsic or free sugar per day, when in actual fact, they should be consuming no more than 50g per day.⁴⁷ For example, an apple would be represented as containing approximately 25% of an average adult's recommended daily intake of sugar. An apple contains only naturally occurring sugar and is accompanied by other beneficial nutrients. An average "serving size" of Nutri-Grain is represented on the %DI label as containing 9.6g of sugar, and therefore 11% of an average adult's recommended dietary intake. Given that the sugar in Nutri-Grain is only added sugar, it actually contains nearly 20% of an average adult's recommended daily intake of extrinsic sugar. As discussed above, the accurate percentage of a child's recommended daily intake may be higher again.

For information about the inadequacies and problems with the European Percentage Guideline Daily Amount (on which the %DI is based) and some powerful examples of the capacity of %GDA labels (and similarly %DI labels) to mislead consumers, particularly children, we would encourage you to explore the <http://stopgda.eu/> website. In particular, we would draw your attention to the example available at http://stopgda.eu/?page_id=23 which demonstrates the misleading impact %GDA labels may have on a 9 year old boy.

⁴⁵ Dietary Guidelines for Australian Adults, endorsed by the NHMRC, on 10 April 2003. p.172. Available at <http://www.nhmrc.gov.au/publications/synopses/files/n33.pdf>.

⁴⁶ 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. Available at: http://www.who.int/nutrition/topics/5_population_nutrient/en/.

⁴⁷ See StopGDA – Argument 7 – Sugar reference. Available at http://stopgda.eu/?page_id=21

6.2.3 Percent %DI labels should not be permitted on food packaging.

For all of the reasons identified above, we believe that the %DI labelling (and similar non-interpretive schemes) cannot meet the Specific Policy Principles or aims of a FOPL scheme. In particular, it would be unable to provide consumers with an adequate mechanism for comparing the healthiness of foods and it would not create a supportive environment to guide consumers towards healthier food options. A % DI labelling or similar non-interpretive scheme would continue to mislead and confuse consumers, particularly those in lower socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups. It would not provide manufacturers with incentives to improve the healthiness of food products (given they would be able to continue to manipulate FOPL information to make products appear healthier than they are).

The OPC would strongly urge FRSC and the Ministerial Council not to consider the current %DI scheme or any similar non-interpretive scheme, a suitable basis for (or suitable scheme to co-exist with) any FOPL scheme that is introduced. Given the capacity of %DI labels to mislead and deceive consumers, they should not be permitted to be displayed on any type of food packaging.

6.3 *Should there be a priority list for the aims provided in the policy guideline? If so what should it be?*

The OPC believes that the aims provided in the Preliminary Draft Policy Guideline may be prioritised into primary aims and a secondary aim.

The overarching aim of any FOPL scheme should be to inform consumers and enable them make healthier food choices. Accordingly, the primary aims of any FOPL should equally be:

- Enable direct comparison between individual foods that, within the overall diet, may contribute to the risk factors of various diet related chronic diseases.
- Be understandable and meaningful across socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups.
- Increase awareness of individual foods that, within the overall diet, may contribute to the risk factors of different diet related chronic diseases
- Support and be consistent with programs and strategies designed to reduce the risk of diet related chronic diseases.
- Guide consumers to food and drinks consistent with the Australia and New Zealand dietary guidelines
- Support and be consistent with the Australia and New Zealand dietary guidelines and Nutrient Reference Values
- Contribute to the creation of a supportive environment that can guide consumer choice towards healthier food and drink options.

The secondary aim of any FOPL scheme should be the identified aim of providing “incentive for improvements to the healthiness of food supply”.

6.4 *While decisions about whether or not a scheme will be developed will not be made at this time, do you have a view on whether any such scheme should be mandatory or voluntary to achieve the aims of FOPL? Why?*

The OPC very strongly believes that a single, mandatory and uniform FOPL scheme will be required if the aims of a FOPL Scheme, as identified in the Consultation Paper and Preliminary Draft Policy Guideline, are to be achieved. The legislative framework must be

clear, enforceable and include meaningful sanctions and a robust penalty system. It will need to be actively monitored and enforced if any real compliance is to be achieved.

This view is consistent with that recently expressed by the World Cancer Research Fund (WCRF) and the American Institute for Cancer Research (AICR). As discussed above in paragraph 4.2, the WCRF and AICR recently released the most authoritative and comprehensive reports ever published on food, nutrition, physical activity and the prevention of cancer.⁴⁸ Following their comprehensive evaluation of the evidence pertaining to the effectiveness of a range of existing interventions worldwide, including food labelling schemes, the WCRF and AICR recommended that governments should “ensure accuracy, uniformity, and availability of product information in all advertising and promotion and on food labels”. They further stated that:

“[d]escriptions and claims made on the labels of foods and drinks and as part of their advertising and promotion need to be justified, clear, and accurate, and also uniform, otherwise customers will be confused. This will also require willingness on the part of industry. As with advertising and marketing of processed foods, voluntary codes are evidently not effective in leading to adequate or universally applied labelling systems. The main action here needs to be taken by governments”.⁴⁹

6.4.1 The problems with self-regulation or a voluntary scheme

The OPC believes that a voluntary scheme will be inadequate to achieve the aims of FOPL as food manufacturers would lack sufficient incentive to comply, and there would be no mechanism for enforcement. Manufacturers could simply 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). Competition among producers has certainly not been sufficient to eliminate bias in relation to the type of information food manufacturers currently highlight on the front of product packs. As discussed above in paragraph 6.1.2, it is common practice for food companies to selectively promote certain nutritional or other characteristics of a product which may be perceived to provide health benefits on the front of product packaging, while failing to disclose (other than on the NIP) other characteristics of the product which make it unhealthy overall. We do not believe companies would disclose nutrition information that consumers may perceive negatively if regulations did not require them to do so.

The OPC also believes that stringent monitoring and enforcement will be required to ensure the accuracy of information contained on any FOP labels. Inaccurate labels would not only mislead consumers, and potentially cause harm, they would also fail to achieve the FOPL aims of a system that provides information and guidance consistent with the Australian and New Zealand dietary guidelines and Nutrient Reference Values.

⁴⁸ 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/>

⁴⁹ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.124. Available at http://www.dietandcancerreport.org/downloads/Policy_Report.pdf?JServSessionIdr008=fo8sc9z062.app43a

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. Our concerns about the effectiveness of this scheme, its inability to achieve the aims of FOPL and its capacity to potentially mislead and deceive consumers are discussed above in paragraph 6.2.2.

Inaccurate labelling is already a systematic problem in Australia. For example, research conducted in NSW indicates that the nutrition information on food labels is often inaccurate. As you may be aware, the New South Wales Food Authority conducted a pilot study on the accuracy of food labels in 2006.⁵⁰ The study analysed 350 samples from 70 different products and found a significant discrepancy between actual nutrition contents and nutrition contents declared on food labels, with an average variation in precision of -13% to +61% for individual nutrition components. The study found that, even allowing for a 20% margin of error on the specified amount, 84% of food labels incorrectly stated the quantity of at least one nutrition component. Of products claimed to be low in fat or calories, 19% contained more fat than claimed, while two-thirds contained more kilojoules. One-third of products tested exceeded their claimed sugar content. We believe that this lack of compliance is largely due to inadequate monitoring and enforcement, and that levels of compliance would improve if more resources were devoted to these areas, and the enforcement activities of regulators were better coordinated. The need for robust monitoring and enforcement is discussed further in paragraph 6.4.3.

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 study conducted by public health organizations, including the OPC, in 2008 found a strong preference among consumers for a single, consistent FOPL system on all food packages. Consumers felt that a single, consistent, FOPL system would be easier to understand than if multiple and inconsistent labelling systems were permitted.⁵¹

6.4.2 An enforceable legislative framework

The OPC is of the view that FSANZ should introduce regulations under the Code, to be implemented through State and Territory Food Acts, that require prescribed FOP labels to appear on all food and beverage packages that are currently required to display a nutrition information panel.⁵² As discussed below in paragraph 7.3.1, prescribed labels should also be required to be displayed on fast food packaging and adapted to be displayed on menus and menu boards.

The regulations should clearly prescribe all FOP labelling requirements to ensure that the scheme is unable to be manipulated, watered down or undermined by package design that may continue to mislead and confuse consumers. To achieve this, the regulations should prescribe not only the FOP labelling requirements and the nutrients and quantities that must be listed, they should also prescribe matters such as the required size, colour and structure of the FOP label (including the required size, font and colour of any text or imagery permitted in the label) and its required location on the front of the pack, i.e. no more than 2 centimeters

⁵⁰ Fabiansson, S. Precision in nutritional information declarations on food labels, *Asia Pacific Journal of Clinical Nutrition* (2006) 15(4).

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 <http://www.cancercouncil.com.au/editorial.asp?pageid=2456>

⁵² *Australia New Zealand Food Standards Code*. Standard 1.2.8 of the Code, clause 3.

from the top of the pack.⁵³ Independent research would be advisable to determine the size and location of the FOP label (together with the size, font and colour of any text or imagery contained therein) that would be required to most effectively achieve the aims of a FOPL scheme, and reduce the potential for packaging to undermine the FOPL scheme and mislead or confuse consumers.

The regulations should also contain a review mechanism to ensure FOP labels are reviewed regularly and amended where necessary to maintain their effectiveness. For example, it may be required that an evaluation of the effectiveness of the FOPL scheme, and its legislative framework, must be undertaken every 2 – 5 years, or 2 years after the regulations are introduced and every 5 years thereafter.

6.4.3 Enforcement

A mandatory FOPL system will only be effective if it is actively enforced by State and Territory regulatory agencies. Currently in Victoria, both DHS and local government give food labeling, and potential misleading and deceptive conduct in relation to food, a low enforcement priority due to limited resources and their ongoing focus on food safety issues.

If state bodies such as DHS and local government are unable to prioritise the investigation and enforcement of a FOPL scheme (and other legislation prohibiting misleading and deceptive conduct) it may be appropriate for another regulatory agency to do so. For example, an appropriate agency in Victoria could be Consumer Affairs Victoria (CAV), which has demonstrated experience in applying and enforcing misleading and deceptive conduct provisions under the *Fair Trading Act 1999*. CAV has previously endorsed this idea.⁵⁴

Future consideration may also be given to whether the establishment of single food regulators in each State and Territory could better achieve this. Single food regulators could achieve greater consistency in communication and enforcement of food regulation, promote better resource allocation, enable adoption of a more streamlined approach to addressing public health and safety issues, and would be better placed to enforce national food standards than local government.

State based regulatory bodies should also be required to conduct regular tests of the accuracy of FOP labels and take appropriate enforcement action against food companies found to be displaying inaccurate information in breach of the regulations. A stringent regulatory system cannot rely solely on complaints from members of the public and interested consumer groups. All state and territory based regulatory bodies should share the results of their testing to inform each other of potential breaches and enforcement needs. To avoid a ‘doubling up’ of monitoring products, many of which will be sold nationally with identical packaging and labelling, different state/territory authorities could take responsibility for the monitoring of products in different food categories.

6.4.4 Penalties

High penalties, capable of ensuring that manufacturers and importers will diligently comply with new FOP labelling requirements must also be available and enforced if the labelling

⁵³ Compare for example the *Tobacco Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* which prescribe very specific requirements for, among other things, the size, location and types of warning messages, explanatory messages and graphic images required to be displayed on cigarette packs, i.e. graphic health warnings.

⁵⁴ Submission by Consumer Affairs Victoria No 2, *VCEC Inquiry into Food Regulation in Victoria*, June 2007, Submission No. 139, pp. 1-2. Available at: [http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/SubmissionDR139-ConsumerAffairsVictoria/\\$File/Submission%20DR%20139%20-%20Consumer%20Affairs%20Victoria.pdf](http://www.vcec.vic.gov.au/CA256EAF001C7B21/WebObj/SubmissionDR139-ConsumerAffairsVictoria/$File/Submission%20DR%20139%20-%20Consumer%20Affairs%20Victoria.pdf)

requirements are to be effective. Currently in Victoria, the penalty for selling or advertising any food that is packaged or labelled in a manner that contravenes a provision of the Code is \$40,000 in the case of an individual and \$200,000 in the case of a corporation.⁵⁵ Given the competitive advantage that may be gained through failing to comply any new FOPL regulations (i.e. avoiding the need to display ‘negative’ information), and the penalty that may realistically be required to ensure all manufacturers diligently comply with a FOPL scheme, maximum penalties will need to be applied.

6.5 *What other issues should be taken into account if a scheme is developed. Please provide details and why they should be considered.*

As discussed above in this submission, while the OPC supports the aims and Specific Policy Principles identified in the Preliminary Draft Guideline, they should be expanded to recognise that the aim of a FOPL scheme should also be to (1) reduce demand for, and the consumption of, unhealthy food and (2) reduce the capacity of packaging and labelling to create an overall potentially misleading impression that a product is healthy.

We agree that decisions about the development of a FOPL labelling scheme must be based on evidence and a determination of how the aims of the FOPL scheme may be best achieved. We agree with the CCA, that other considerations, such as cost to industry, must be considered as secondary to these aims. We also agree with the CCA that any evidence on which decisions are based must be assessed for its quality, including the transparency and rigorousness of research methodology and study findings, with greater weighting given to independently conducted research that has been peer reviewed.

As identified above in paragraph 5.2, any FOPL scheme must also include a clear strategy in relation to how it should be evaluated, the necessary consumer education requirements and the regulatory framework that will underpin the scheme.

7 Policy Options

7.1 *Do you consider that there should be Ministerial policy guidance on FOPL? If so why and what type? If not please explain why*

The OPC supports Ministerial policy guidance on FOPL. It is vital that the aims of any FOPL scheme are clearly identified. Upon identifying these aims, we would encourage the Working Group to exercise the options provided in the Terms of Reference and give guidance on the need for a single, mandatory, colour coded interpretive FOPL scheme (such as traffic light labelling) if the aims of FOPL are to be achieved.

7.2 *Please indicate which policy option you prefer and why*

The OPC strongly supports policy option 4, that the Policy Guideline should give guidance that a colour coded interpretive FOPL scheme should be introduced in Australia and New Zealand.

For all of the reasons identified above, maintaining the status quo or introducing a non-interpretive scheme would be inadequate to achieve the aims of a FOPL scheme. Accordingly, Option 1, ‘maintain the status quo’ and Option 3, ‘give guidance that a non-interpretive scheme should be introduced’, should not be adopted.

Given the work that the FRSC FOPL Working Group has undertaken, and the knowledge gained of the evidence base for a FOPL scheme, we would encourage FRSC to go beyond

⁵⁵ *Food Act 1984* (Vic) s.16

merely providing guidance on the scope, aim and matters to be taken into account if any FOPL scheme is to be developed. We urge you to provide guidance in relation to which scheme the currently available evidence demonstrates can best achieve the aims of FOPL. In our view, the evidence clearly demonstrates that a colour coded interpretive scheme, such as traffic lights, will be the most effective scheme for achieving these aims. Accordingly, we do not support Option 2, to provide guidance only on the scope, aim and matters to be taken into account if any FOPL scheme is developed.

The evidence reviewed by FRSC, and the evidence outlined in this submission, clearly demonstrates that a single, mandatory, uniform colour coded interpretive scheme for FOPL is required to achieve the aims of FOPL. The OPC strongly supports the development of a traffic light type scheme.

7.2.1 A traffic light labelling scheme

As discussed above in paragraph 4, evidence from Australia and overseas, clearly demonstrates that consumers find traffic light labelling schemes easier to use and less confusing than non-interpretive schemes. The evidence discussed by the FRSC FOPL Working Group in Attachments 2 and 3, together with the further evidence highlighted by CCA and the OPC (see paragraph 4) clearly demonstrates that a simple traffic light scheme would enable all consumers to make healthier food choices (including consumers from lower socio-economic and culturally/linguistically diverse groups). As discussed above, the consumer study conducted by a range of health organisations in Australia in 2008, including the OPC, clearly found consumers would support the introduction of a single, consistent FOPL scheme and that a traffic light labelling system is the best system to enable them to make healthier choices. The public's support for a traffic light labelling scheme were confirmed by the recent public opinion data obtained by the Centre for Behavioural Research in Cancer, Cancer Council Victoria, outlined in paragraph 4.1.

We strongly believe that the evidence demonstrates that a traffic light scheme would not only guide consumer choice towards healthier food options, but would also guide consumer choice away from unhealthy options and reduce the capacity of manufacturers to mislead and confuse consumers (as discussed above in paragraph 6.1.2).

It is also likely that a Traffic Light system would encourage food manufacturers to change the food supply through product reformulation. The information compiled by the FRSC FOPL working group (Attachments 2 and 3 to the Consultation Paper), indicates that there is anecdotal evidence of this occurring since the introduction of a traffic light scheme in the UK.

If a traffic light system is recommended and introduced, consideration will need to be given to the type of traffic light scheme to be introduced. As discussed above in paragraph 5.4, we would support a traffic light system based on individual nutrient criteria, with different criteria applied to different food groups. We would also support consideration being given to complimenting such a system with an overall traffic light ranking for the food product. Such a ranking could be based on FSANZ' Nutrient Profiling Scoring Criteria and demonstrate the overall healthiness of a product. While the research conducted by health organisations in 2008 did not find a significant difference in consumers understanding when using a nutrient based traffic light system alone, as opposed to a combined nutrient based and overall traffic light rating system when presented on food packaging, further research should be conducted to determine whether an overall rating would assist consumers – particularly when comparing products across food categories – or have other benefits. As noted in CCA's submission, it may be valuable to test the impact of overall product rankings when presented in different formats.

7.3 Are there other options that should be considered? If so what and why?

7.3.1 Fast food packaging and menu labelling

The OPC believes that foods that contribute most to an unhealthy diet should be subject to FOPL requirements. According to a recent analysis, the Australian fast food market is worth approximately \$9 billion, 60% of which is held by 17 major food chains. In 2005 1.4 billion fast food or take away meals were served to consumers.⁵⁶ Fast food chains and takeaway outlets are the most popular place for buying a meal or snack, particularly for families with children under 18.⁵⁷ US Research has found that most people substantially underestimate the energy content of restaurant food, and high caloric restaurant food in particular.⁵⁸

In light of the amount of fast food that is consumed and the fact that it is usually high in fat, sugar and salt and of poor nutritional quality, consumers need to be provided with appropriate nutrition information about fast food to enable them to make informed choices. Accordingly, consideration should be given to requiring FOP labels to be displayed not only on foods that are currently required to display a NIP, but also on foods (and typical food combinations) sold by 'fast food chains'.⁵⁹

'Fast food chain' or 'quick service restaurant' could be defined in accordance with a number of factors, such as whether the food is sold by a business that has more than a certain number of outlets in Australia (i.e. restaurants with at least 5 outlets), and/or which offer standardised products, have standardised menus or are associated with the same trademark, logos or advertising.⁶⁰ FOPL requirements should apply not only to the food packaging, but should also be adapted and required to be displayed on menus and menu boards. This would enable consumers to be informed of the healthiness of the available food choices prior to purchase. Ideally, we would like to see an overall traffic light rating next to foods (and typical food combinations) available on menus and menu boards. Another option would be for FSANZ to require fast food chain menus to use a colour coded interpretive scheme to display the energy content of foods, or certain key nutrient criteria, such as saturated fat and salt. Further research may be required into the most effective scheme to ensure consumers are provided with meaningful and easy to understand 'at a glance' information.

Products sold at fast food chains are produced according to standard formulas with little variation. Therefore it would not be unduly difficult or costly for fast food companies to analyse the nutrient content of their products (as it might be for small take-away food businesses for example) and provide nutrition information on product packaging and menus. Indeed, some fast food companies, such as McDonalds, already display the nutrient content of their products for the purpose of information brochures available at point of sale and nutritional information available through their websites.

⁵⁶ BIS Shrapnel. Fast Food in Australia, 2006 to 2008. March 2005.

⁵⁷ BIS Shrapnel. Foodservice Report. May/June 2003.

⁵⁸ 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. Available from: <http://jama.ama-assn.org/cgi/content/full/300/4/433>

⁵⁹ Standard 1.2.1 of the *Australia New Zealand Food Standards Code* currently exempts food prepared and packaged on the premises from which it is sold or food packaged in the presence of the food purchaser from food labelling requirements prescribed in the Code, including the ingredient labelling requirement under Standard 1.2.4 and the nutrition information requirement under Standard 1.2.8, unless a nutrition claim is made about the food.

⁶⁰ Compare for example, *New York City Health Code* s. 81.50, which defines 'food service establishments' for the purpose of its menu labelling requirements. Summary available at: http://www.nyc.gov/html/doh/downloads/pdf/cdp/calorie_compliance_guide.pdf. The Code requires caloric information to be prominently displayed on menus and menu boards in restaurants with at least 15 branches (that operate under common ownership or are individually franchised, whether locally or nationally, or do business under the same name). The food service establishment must also offer substantially the same menu items and an exemption from labelling applies to menu items that are listed on a menu or menu board for less than 30 days in a calendar year.

Fast food menu labelling requirements already apply in New York City and a number of other US jurisdictions. Since the introduction of the regulations in New York City on 31 March 2008, that require caloric information to be displayed on menus and menu boards in relevant “food service establishments”⁶¹, a survey has found that 90% of restaurant goers found the calorie count displayed to be higher than expected. As a consequence 82% said that the calorie information was affecting what they ordered and 60% said it affected where they visit. The research also suggested a high level of consumer support for mandated disclosure of fat and sodium content in restaurant foods.⁶² The New York City Health Department have estimated that the requirements introduced under the code could reduce the number of people who suffer from obesity by 150,000 over the next five years and prevent more than 30,000 cases of diabetes.⁶³

In the UK, the Food Standards Agency is currently working with industry to introduce calorie labelling on restaurant menus later this year.⁶⁴ The decision was made by the Food Standards Authority in the UK to introduce calorie labelling in light of research that consumers use nutritional information where it is available in restaurants to make healthier choices. Consumers also reported that they want clear and easy to use information at point of sale, and do not want to have to ask for it or for it only to be provided on the company’s website.⁶⁵

As highlighted in paragraph 4.1, a recent study by the Centre for Behavioural Research in Cancer, Cancer Council Victoria, found that more than 8 in 10 consumers are in favour of food and drink chains listing nutritional information on menu boards (62% are strongly in favour). More than 8 in 10 consumers were also in favour of displaying this information using colour-coded traffic light labelling (58% are strongly in favour).⁶⁶

7.4 What are the impacts &/or cost &/or benefits of pursuing each of the options above or any other option that you believe should be considered? Please be explicit as to whether these impacts, cost & benefits are for consumers, industry, government and/or others?

As discussed in paragraph 2, overweight and obesity are serious public health problems in Victoria and contribute significantly to the incidence of chronic disease. The evidence demonstrates that clear, simple and meaningful FOP labels could improve consumer knowledge about the healthiness of food, the products they purchase and the products they ultimately consume.

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. 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

⁶¹ *Ibid.*

⁶² Technomic Media Release. Calorie count on menus is influencing consumer behaviour, says Technomic. 5 February 2009. Available at http://www.technomic.com/pressroom/calorie_count_release_feb5.html

⁶³ New York City Department of Health and Mental Hygiene. Board of health votes to require chain restaurants to display calorie information in New York City. 2008. Available at www.nyc.gov/html/doh/html/pr2008/pr008-08.shtml

⁶⁴ Food Standard’s Agency Press Release. FSA announces first steps to introduce nutrition information for consumers when eating out of home. 15 January 2009. Available at <http://www.food.gov.uk/news/pressreleases/2009/jan/nutinfoeatingout>

⁶⁵ Food Standard’s Agency Press Release. FSA announces first steps to introduce nutrition information for consumers when eating out of home. 15 January 2009. Available at <http://www.food.gov.uk/news/pressreleases/2009/jan/nutinfoeatingout>

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.

lost wellbeing.⁶⁷ 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 a FOPL scheme (together with associated consumer education costs) are likely to be outweighed by the savings to the economic costs of obesity in Australia.

In addition, while the food industry may incur some initial costs when first adapting their packaging to meet the requirements of a FOPL scheme, these costs are likely to be passed onto consumers but are unlikely to be unduly burdensome (for industry or consumers). As discussed in paragraph 4.2, the recent report released by the WCRF and AICR found that changes to labelling systems are not expensive and can put in place 'fairly quickly'.⁶⁸

It is also notable of course that food manufacturers regularly make changes to food packaging 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.

The FRSC FOPL Working Group (Attachment 3 to the Consultation Paper) has raised the concern that if a voluntary FOPL scheme is introduced, and as a result, applied to healthier products only (as discussed in paragraph 6.4.1, it is unlikely that food manufacturers would adopt a voluntary scheme that requires them to highlight unhealthy food) there may be a risk that the cost of healthy food would be increased, and that the current disparity between the cost of healthy and unhealthy food could be widened (further increasing the economic barrier to accessing healthy foods). As discussed above, it is unlikely that a FOPL scheme would give rise to significant costs to food manufacturers and thereby result in significant increases to food prices. However, we agree with the FRSC FOPL Working Group that the government should avoid introducing a system that could potentially widen the gap between the price of healthy and unhealthy food and further impact on access to healthy food. A uniform and mandatory FOPL scheme would ensure that any costs are equitably incurred by manufacturers of healthy and unhealthy foods. If, as we expect, a FOPL scheme is effective in guiding consumers towards healthier food choices, the FOPL scheme will lead to the increased sale of healthy food and financially benefit healthy food manufactures (potentially off-setting any costs incurred in implementing the FOPL scheme).

Food manufacturers, particularly manufacturers and producers of healthy food, are also likely to benefit from a FOPL scheme as it will reduce the unfair competitive advantage some manufacturers gain through their potentially misleading and deceptive packaging of their products. The techniques used by some food manufacturers, to selectively promote certain nutritional or other characteristics of a product which may be perceived to provide health benefits, while failing to disclose (other than on the NIP) other characteristics of the product which make it unhealthy overall are discussed in paragraph 6.1.2.

Ultimately, consumers want and are entitled to information that is accurate and guides them towards healthier food options. Given any costs incurred by the food industry are likely to be passed on to consumers, their interests in a sound FOPL scheme should be paramount.

⁶⁷ Access Economics. The growing cost of obesity in 2008. August 2008. Canberra: Diabetes Australia.

⁶⁸ WCRF and AICR. Policy and Action for Cancer Prevention - Food, Nutrition, and Physical Activity: a Global Perspective. 2009. p.63.

8 Conclusion

We thank you again for this opportunity to be involved in the development of your FOPL policy guideline. We look forward to the outcomes of this consultation and viewing your final draft guideline for the Ministerial Council.

Please do not hesitate to contact Nicole Antonopoulos, Legal Policy Adviser to the Obesity Policy Coalition, on (03) 9635 5612 or by e-mail at nicole.antonopoulos@cancervic.org.au if you wish to discuss any of the issue raised in this submission or need any further information.

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