CPHD Discussion Paper 3: Food Regulatory Challenges*

Objective

This paper has been prepared by the Consumer and Public Health Dialogue (CPHD) for consideration by the Board of Food Standards Australia New Zealand (FSANZ). It outlines public health and consumer-related perspectives on food regulatory challenges around protecting public health and promoting eating patterns consistent with dietary guidelines.

Background

The primary objective of the Australian and New Zealand Food Regulation System is to protect public health and safety.

Particularly relevant to this objective is the fact that unhealthy diet is now the biggest contributor to the burden of disease in Australia[1] and New Zealand[2], and also exacerbates obesity, now the second biggest contributing risk factor in both countries. The primary drivers of these risk factors are 'obesogenic' food environments[3,4]. These include the promotion, availability, accessibility and affordability of foods that encourage unhealthy eating and undermine the effective translation of the Australian Dietary Guidelines[5] and the New Zealand Eating and Activity Guidelines[6] into practice[4,7].

Recent data from the Australian Health Survey 2011-12 shows that fewer than 7% of Australians currently consume diets consistent with the recommendations of the Australian Dietary Guidelines with unhealthy 'discretionary' food and drinks providing at least 35% of the energy intake of adults and at least 39% of the energy intake of children[8]. These figures are even higher for Aboriginal and Torres Strait Islander Australians[9]. In Australia, discretionary foods and drinks are defined as energy-dense nutrient-poor choices high in added sugar, saturated fat, salt and/or alcohol that are not required for health[5,10]. In New Zealand, these are referred to as highly processed foods that are highly refined and contain high levels of saturated fat, salt and/or sugar and are low in nutrients[11].

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[1] Institute for Health Metrics and Evaluation. Global Burden of Disease, 2010. Country Profile Australia, available at: www.healthdata.org/sites/default/files/files/country_profiles/GBD/ihme_gbd_country_report_australia.pdf (Accessed 16 October 2015).

[2] Institute for Health Metrics and Evaluation. Global Burden of Disease Country Profile, 2010, Country Profile New Zealand, Available at: http://www.healthdata.org/new-zealand (Accessed 16 October 2015).

[3] Swinburn B, Sacks G, Vandevijvere S, Kumanyika S, Lobstein T, Neal B, Barquera S, Friel S, Hawkes C, Kelly B, L'Abbé M, Lee A, et al, INFORMAS (International Network for Food and Obesity/non-communicable diseases Research, Monitoring and Action Support): overview and key principles, Obesity Reviews, 2013; 14 (Suppl 1) 1-12.

[4] The Lancet, Second Series on obesity, February 2015. Available at: http://www.thelancet.com/series/obesity-2015 (Accessed 19 October 2015).

[5] National Health and Medical Research Council (NHMRC) and the Australian Government. Australian Dietary Guidelines, 2013, Available at: www.eatforhealth.gov.au (Accessed 16 October 2015).

[6] NZ Ministry of Health, Food and Nutrition Guidelines, Available at: http://www.health.govt.nz/our-work/preventative-health-wellness/nutrition/food-and-nutrition-guidelines (Accessed 16 October 2015).

[7] Swinburn BA, Sacks G, Hall KD, et al. The global obesity pandemic: shaped by global drivers and local environments. Lancet 2011;378(9793):804-14.

[8] Australian Bureau of Statistics (ABS 2014) Australian Health Survey: Nutrition First Results - Foods and Nutrients, 2011-12,Available at; http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4364.0.55.007main+features22011-12.

[9] ABS 2015. Australian Aboriginal and Torres Strait Islander Health Survey: Nutrition Results - Food and Nutrients, 2012-13. Available at: http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4727.0.55.005~2012-13~Main%20Features~Discretionary%20foods~16.

[10] National Health and Medical Research Council (NHMRC 2011). A Modelling System to Inform the Revision of the Australian Guide To Healthy Eating, Australian Government, National Health and Medical Research Council and Department of Health; 2011.

[11] Ministry of Health. (2015). Eating and Activity Guidelines for New Zealand Adults. Retrieved from: http://www.health.govt.nz/publication/eating-and-activity-guidelines-new-zealand-adults [1/12/2015].

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In New Zealand, 1 in 3 adults are obese (30%), and a further 35% of adults are overweight. The rates are especially high for Maori (46%) and Pacific (67%) adults12. Recent New Zealand Health Surveys and the Adult Nutrition Survey have focussed on consumption patterns of particular food groups rather than highly processed food and drinks collectively[12,13].

In Australia, modelling has demonstrated that, in the current 'obesogenic' environment and with 63% of all adults, 25% of all children, 71% of Aboriginal and Torres Strait Islander adults and 29% of Aboriginal and Torres Strait Islander children already overweight or obese, there is no room within the energy limits of the diets of most Australians for any discretionary choices[10].

The leading diet-related health conditions in Australia and New Zealand result from poor dietary patterns, specifically an inadequate intake of healthy foods and an excessive intake of discretionary foods and drinks, rather than nutrient imbalance per se[5,14]. The International Food Policy Research Institute's Global Nutrition Report 2015[15] states that the growing evidence on the rise of obesity and non-communicable diseases globally makes it increasingly clear that current food systems are the drivers of poor nutrition outcomes. The WHO's Global Action Plan[16] for the prevention and control of non-communicable diseases 2013-2020 identifies specific strategies to address these problems.

The second of the recently revised UN Sustainability Goals[17] states that a fundamental consideration in the protection of public health is to protect the sustainability of the food supply and ensure its nutritional adequacy for future generations. The principles for protecting food sustainability include[18].

i) avoid excessive food consumption;
ii) avoid excessive consumption of discretionary foods;
iii) promote plant-based diets and reduce animal-based diets; and
iv) reduce food waste.

Principles i), ii) and iv) are particularly relevant for decision-making in the context of food regulation.

It is also essential that relevant policy and regulatory decisions are made by stakeholders without vested interests[19]. Indeed, failure to protect public health from poor diet and its impacts has huge social and economic implications for Australia and New Zealand[5,11].

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[12] Ministry of Health. (2015). NZ Health Survey. Retrieved from: http://www.health.govt.nz/nz-health-statistics/national-collections-and-surveys/surveys/current-recent-surveys/new-zealand-health-survey [1/12/2015].
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[14] Burlingame, B. (2004). "Holistic and reductionist nutrition." Journal of Food Composition and Analysis 17(5): 585-586.
[15] The International Food Policy Research Institute, Global Nutrition Report 2015, Available at: http://globalnutritionreport.org/the-report/.
[16] Global action plan for the prevention and control of non-communicable diseases 2013-2020. World Health Organization 2013, available at: http://www.who.int/nmh/events/ncd_action_plan/en/.
[17] Transforming our world: the 2030 Agenda for Sustainable Development, United Nations 2015, available at https://sustainabledevelopment.un.org/post2015/transformingourworld.
[18] Friel, S., et al. (2013). "Towards healthy and sustainable food consumption: an Australian case study." Public Health Nutr 17(5): 1156-1166.
[19] Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level, available at http://www.who.int/nutrition/consultation-doi/nutrition-introductory-paper.pdf.

Current challenges

Currently in Australia and New Zealand, nutrition policy gaps make it difficult for public health and consumer groups to raise issues that ensure unhealthy, obesogenic and unsustainable food environments are on the agenda, and few avenues to address critical food, nutrition and diet- related health policy issues. The urgent need for such action was highlighted recently by the WHO[16]. The food regulatory system is only one small component of the broader framework of the food and nutrition system that dictates diet-related health outcomes in Australia and New Zealand. A comprehensive food and nutrition policy would have four key principles: food, nutrition and health; social equity; environmental sustainability; and monitoring and surveillance, evaluation and review[20].

Among recent specific initiatives, the New Zealand Ministry of Health released the Childhood Obesity Plan with 22 initiatives drawing on New Zealand and international evidence, including the interim report from the WHO Commission on Ending Childhood Obesity[21]. In Australia, a National Diabetes Strategy[22] has recently been released and a National Strategic Framework for Chronic Conditions has now been developed[23].

Within the scope of the food regulatory system, CPHD's major issues of concern are the lack of regulatory activities to:

- protect against the proliferation of discretionary foods being eligible for voluntary fortification and carrying nutrition and health claims;
- strategically determine the need for fortification to address public health priorities, rather than encourage ad-hoc industry-driven voluntary fortification initiatives for market advantage;
- prioritise public health nutrition and support decisions that promote healthy eating patterns consistent with the Australian and NZ dietary guidelines;
- strategically promote the evidenced-based dietary guidelines and sustainable diet recommendations.

To address these concerns, we need a food systems approach. The three criteria (structure, process, outcome) of the classic Donabedian model for defining and improving quality health services have been used to analyse policy and procedural texts of the regulatory food system (Figure 1)[24]. The findings from the analysis show:

- Structure: The governance of the food regulatory system suffers from the separation of its science and policy-making arms. This shows up in diminished transparency and public participation in how policy agendas are set, how policy problems are framed and how evidence is interpreted and applied in policy development.

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[20] Lee A, Baker P, Stanton R, Friel S, O'Dea K et al. Scoping study to inform development of the National Nutrition Policy for Australia, QUT 2013. Internal document held by the Australian Government, Department of Health.

[21] Ministry of Health. (2015). Childhood Obesity Plan. Retrieved from: http://www.health.govt.nz/our-work/diseases-and-conditions/obesity/childhood-obesity-plan [1/12/2015].

[22] Australian National Diabetes Strategy 2016–2020. Available at: http://www.health.gov.au/internet/main/publishing.nsf/Content/3AF935DA210DA043CA257EFB000D0C03/$File/Australian%20National%20Diabetes%20Strategy%202016-2020.pdf.

[23] National Strategic Framework for Chronic Conditions, available at: http://www.health.gov.au/internet/main/publishing.nsf/content/nsfcc.

[24] Lawrence M, Pollard CM, Weeremanthri TS, Positioning food standards programmes to protect public health: current performance, future opportunities and necessary reforms, Public health Nutrition 2019 (5) 22:912-926 https://doi.org/10.1017/S1368980018003786

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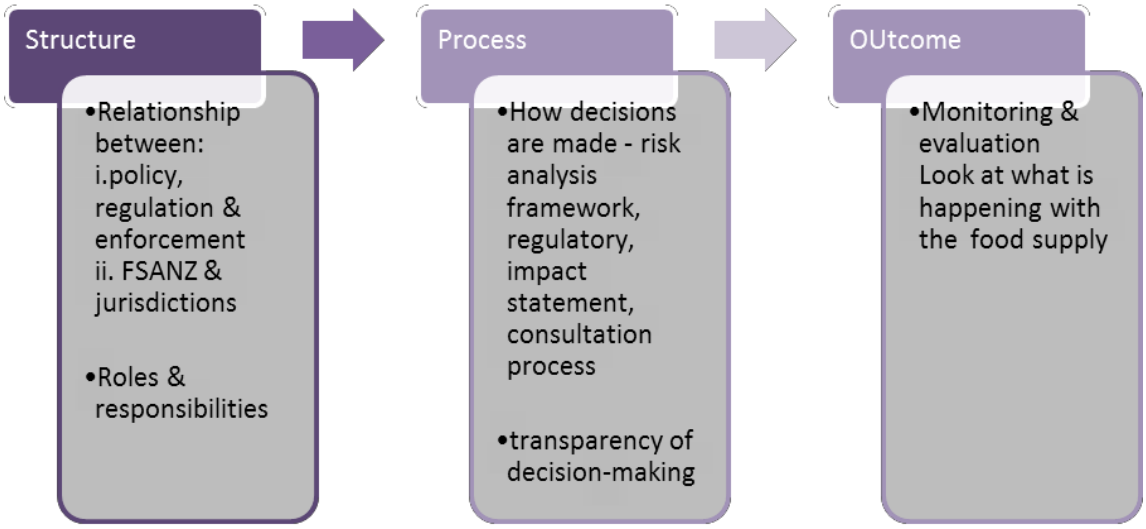
- Process: The risk analysis framework's reductionist orientation is adequate to protect against microbial food contamination (classic food safety) and specific nutrient imbalances, but inadequate to inform decisions to protect public health against risks that are predominantly of a holistic (food and dietary pattern) nature. Further, the regulatory impact statement's rules have the effect of limiting from decision-making the opportunity to promote public health by externalising the potential health, social and environmental benefits that could be delivered by food standards.

- Outcome: The manufacturers of discretionary foods and drinks exploit food standards to create marketing opportunities for energy dense-nutrient poor products, while evading scrutiny of the health, social and environmental costs associated with their development, production and consumption. Collectively this contributes to the unhealthy, obesogenic, unsustainable food environment, while stifling an opportunity for setting food standards to promote health by creating a food environment conducive to healthy and sustainable dietary patterns.

FSANZ's roles and responsibilities relate primarily to the process component above.

Figure 1: Adaptation of the Donabedian Model to the Food Regulatory System



Potential solutions

CPHD considers that the following process reforms could potentially strengthen FSANZ's decision-making ability to protect public health:

1. Reform of the risk analysis framework:
   - The framework needs to be reconceptualised to be more relevant in addressing the most significant public health risks (poor dietary patterns, overconsumption of discretionary foods, and waste). These problems require a new approach that involves the nature and scope of the causes and mechanisms of the public health risk, new methods to specify and measure the risk, and new decision-making procedures to inform policies and standards.
   - Risk analysis needs to be placed in the context of foods and dietary patterns and not simply nutrients, e.g. risk outcomes need to include the impact of food regulation on dietary patterns and food systems, and not just inadequate and/or excessive intakes of specific nutrients.
   - A standard definition of discretionary foods should be agreed and used.

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- Decision-making should comply with current agreed policy statements around:
  - Promotion: "Permission to fortify should not promote consumption patterns inconsistent with the nutrition policies and guidelines of Australia and New Zealand. Permission to fortify should not promote increased consumption of foods high in salt, sugar or fat, or foods with little or no nutritional value that have no other demonstrated health benefit"; and
  - Misleading conduct: "The fortification of a food, and the amounts of fortificant in the food, should not mislead the consumer about the overall nutritional quality of the fortified food."
- A 'principled' approach to decision-making is needed:
  - Discretionary foods and drinks should be ineligible to access voluntary fortification
  - Discretionary foods and drinks should be ineligible to carry nutrition and health claims.
- Monitoring and evaluation needs to assess the collective impact of food standards on dietary patterns and profiles, not just the impact of individual food standards on individual nutrients.

2. Reform of regulatory impact statement:
   - Health, social and environmental impacts should be included as measures of risk and benefits in regulatory impact statements. For instance, the assessment of manufacturers' economic cost of regulatory measures should be extended to include the economic cost to society of the health care burden and environmental impacts.
   - The current burden of proof should be reversed so that non-regulatory interventions must demonstrate they are more cost-effective than the status quo in helping promote public health.
   - An 'ecological stewardship' metric should be developed and made mandatory on a food label. It should capture the carbon footprint, water use, biodiversity and other factors associated with the product's production and/or processing.
   - A standard should be set specifying limits on the environmental impact (using the ecological stewardship metric) of food production and processing associated with a food product.

Several potential interactions and linkages with international agencies increasingly recognise the need to respond to the concerns outlined above, including the World Cancer Research Fund[25], the WHO[26] and the FAO[27,28,29].

As one recent example of an appropriate response, the Codex Alimentarius' General Principles for the Addition of Essential Nutrients to Foods[30], revised in 2015, states under section 3.3.1. that "The selection of foods to which essential nutrients may be added should be in line with the intended purposes of nutrient addition…., dietary patterns, socioeconomic situations and *the need to avoid any risks to health*."

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[25] The World Cancer Research Fund NOURISHING framework Available at: http://www.wcrf.org/int/policy/nourishing- framework (Accessed 16 October 2015).
[26] WHO (20014) Nutrition labels and health claims: the global regulatory environment. Available from http://www.whqlibdoc.who.int/.../2004/9241591714.pdf (Accessed 18 October 2015).
[27] FAO (2010) Innovations in food labelling. Available at: http://www.fao.org/docrep/018/i0576e/i0576e00.htm (accessed 18 October 2015).
[28] FAO, WHO (2014), Second International Conference on Nutrition: Framework for Action, available at http://www.fao.org/about/meetings/icn2/en/ (Accessed 18 October 2015).
[29] WHO/FAO (2003)Diet, nutrition and the prevention of chronic diseases , Report of the joint WHO/FAO expert consultation, especially section 6.4.3. Available at: http://www.who.int/dietphysicalactivity/publications/trs916/en/gsfao_introduction.pdf (accessed 18 October 2015)

Next steps

The CPHD would welcome the opportunity to discuss with FSANZ, and other stakeholders as appropriate, these issues and any other improvements that could help regulatory decisions to better protect public health and promote eating patterns consistent with Australian and New Zealand Dietary Guidelines.

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[30] Codex Alimentarius (2015) General Principles for the Addition of Essential Nutrients to Foods, Available at: http://www.codexalimentarius.org/input/download/.../CXG_009e_2015.pdf (Accessed 18 October 2015).