

SUBMISSION ON THE FORM OF THE  
FOOD 'AS PREPARED' RULES FOR  
THE HEALTH STAR RATING SYSTEM

The George Institute for Global Health

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## The George Institute for Global Health

The George Institute for Global Health's mission is to improve the health of millions of people worldwide.

The George Institute's Food Policy Division works in Australia and internationally to reduce rates of death and disease caused by diets high in salt, saturated fat, sugar and excess energy, by undertaking research and advocating for a healthier food environment.

The Food Policy Division's main areas of activity are food reformulation, monitoring changes in the food supply, and developing and testing innovative approaches to encourage consumers towards better food choices.

The George Institute has been designated a World Health Organization Collaborating Centre on Population Salt Reduction, with remit to support countries to achieve global targets for reducing salt by 30% by 2025.

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## Preamble

The George Institute welcomes the opportunity to provide input to the form of the food ('as prepared') rules for the Health Star Rating system.

We note our previous correspondence on this issue in the letter to Hon. Minister Gillespie on 21 March 2017, and welcome efforts to address and resolve this issue as a matter of priority.

This submission is based on our experience with the HSR system in Australia, but we believe the reasoning used is similarly applicable to the system's operation in New Zealand.

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

Yes, we believe so.

The George Institute have supported HSR since its inception on the basis that interpretive front-of-pack nutrition labelling can play an important role in a comprehensive approach to improving Australian diets.

By providing simple, at-a-glance nutrition information, HSR has potential to help consumers make healthier choices. However, to achieve its primary public health objective, consumers must understand and trust the system. This trust is also critical to HSR retaining marketing value for industry.

We understand manufacturers displaying HSR 'as prepared' report following the current Guide to Industry to the HSR Calculator. However, we believe that in its current form, that Guide may be producing outcomes that are unfair and misleading.

#### Problems for consumers:

We note current guidance materials derive from existing provisions of the Australia New Zealand Food Standards Code (Standard 1.2.8, Clauses 11-3) pertaining to provision of the Nutrition Information Panel (NIP) on certain foods that are drained, reconstituted or intended to be prepared or consumed with at least one other food.

For those that require reconstituting or draining, this means the NIP typically shows the nutrient profile of the food in the form it invariably will be consumed i.e. with water added, or drained. For other categories, it means foods display multiple nutrient profiles: with the food 'as sold' presented alongside that of the food 'as prepared.' In this case a reference to this preparation must appear at the top of the 'as prepared' column, and directed elsewhere in detail on pack. Consumers can compare the nutrient profile of the package contents, to what their meal will contain if they follow these instructions.

While intended to make nutrition information *more* meaningful in that context, we are concerned attempts to translate this to HSR – which by design relies upon a single, simple graphic of overall healthiness – are producing exactly the opposite effect.

As it stands, companies are using the optimal preparation of their product to derive the highest possible HSR. However, without the nuance of the side by side 'as sold' and 'as prepared' comparison, and without any intuitive link between the HSR and the contents of the packaging, the utility of the system

to consumers is sacrificed to confer eligible manufacturers maximum marketing benefit. This is fundamentally and unacceptably at odds with HSR's aims and objectives as a public health and consumer choice initiative and therefore cannot be maintained.

As we have previously noted, current HSR Guidance is also producing results potentially inconsistent with provisions of Australian Consumer Law. The Australian Competition and Consumer Commission's (ACCC) 2015 decision on Uncle Tobys Oats is illustrative of the issues at stake. In that case oats were labelled a 'Natural Source of Protein', with fine print noting this was on the basis of preparation with a relevant quantity of skim milk. Noting that at least some people prepare oats with water, and that oats themselves would not meet the requirements for a protein claim, the ACCC found the dominant impression created by the packaging was false and misleading for consumers. The manufacturer was fined \$32 400.

Arguably, the application of current HSR guidance by high profile examples such as Nestle's Milo, with a HSR of 4.5 that relies on a very particular (and not representative) preparation of the product, create the same misleading results from the perspective of consumer law.

We are particularly concerned that ongoing negative media results in the public seeing this example as a representation of the failure of HSR as a whole, and not as an act of false and misleading conduct by Nestle.

## Alignment with the dietary guidelines:

To meet its aims and objectives in addressing Australia's high burden of diet-related disease, HSR must be aligned with other food regulation, public health policies and authoritative sources of dietary advice, including, inter alia, relevant Australian and New Zealand Dietary Guidelines (Ministerial Council Policy Statement on FOP Labelling, endorsed 2009).

Those Guidelines recommend whole foods from five primary categories, and discourage consumption of 'discretionary' or junk foods. Despite this advice, the Australian population obtains 35% of its energy intake from discretionary foods, with teenagers deriving more than 40% from such foods[1], which are major contributors to overweight and obesity, as well as heart disease, type 2 diabetes and stroke.

HSR alignment with the ADGs is far broader than the 'as prepared' issue. However, we note the following:

- Many categories eligible to display 'as prepared' are discretionary: cake mixes, cordials, hot chocolate mixes, coffee-based mixes, syrups, gravies, savoury sauces, and spice or seasoning mixes where these are akin to salt or stock cubes. Given recommendation to eat these foods only occasionally and in small amounts due to their poor nutritional quality, they should not receive a disproportionate benefit potentially conferred by current 'as prepared' guidelines.[2]
- The situation may be less clear with soups: dry soup mixes are discretionary, but soup prepared from dry soup mix is not. Canned soups are considered core.
- Remaining 'core' categories include dry rice and pasta products, mashed potato products and custard. For reasons set out further in question 4, we do not believe these products are the main cause of concern under current guidance, nor would their HSR be likely to be significantly impacted by our preferred solution (see more detail in Question 5).

We foresee potential industry argument that some products e.g. sauces, seasonings and hot chocolate mixes can be used to incentivize consumption of core items such as vegetables and milk. However, we reiterate our belief that it is unfair and misleading to give these products (themselves high in negative

nutrients like salt and sugar) the benefit of a HSR incorporating healthy core items when actual preparations vary greatly. The ADGs support consumption of these core components *without* the addition of highly-processed sauces, powders and seasoning.

## Problems for industry:

It is our strong view problems arising for public health and consumers should be the primary concern addressed, given HSR is first and foremost a public health initiative.

This notwithstanding, industry may also be concerned by current rules, given benefits are not enjoyed equally by all manufacturers. For example, breakfast cereals (traditionally displaying a variety of as prepared values in the NIP) must display HSR as sold. Breadcrumbs are also singled out as an example which, while typically not eaten alone, can be consumed in a variety of ways and therefore directed to display HSR as sold, presumably to avoid consumer confusion.

By contrast, recently appearing burger seasoning mixes consisting mainly of salt and additives can elevate their HSR from 0.5 to 4.0 on the basis of valuable nutrients obtained from a variety of whole foods such as vegetables, lean mince and wholegrain bread. At the same time, manufacturers of these typically unpackaged 'core' items are not able to enjoy the benefit of using HSR on their own products, which fall outside the scope of the current system.

Current guidance therefore does not create a level playing field for industry – not for manufacturers of packaged foods in different categories, nor for fresh unpackaged produce.

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

For the reasons set out above we believe it is not acceptable to maintain the status quo. To do so risks the integrity of the system as a whole.

Without further information on their background and rationale, The George Institute does not accept options 2 & 3 already discussed. It is not clear why further exceptions or exemptions are justified.

We propose a modified version of Option 3 – Product 'as sold' or as rehydrated with water or *drained only with no further exemptions*. We believe this option would be intuitive to consumers, consistent with existing relevant provisions of the Food Standards Code, and produce results aligned with the ADGs.

Further reasons in support are set out our answer to Question Four below.

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

### Current and potential scope: insight from the FoodSwitch database

We conducted a preliminary analysis of food categories and products impacted by current 'as prepared' HSR Guidance in our FoodSwitch Database. [3]

We found that products eligible to display 'as prepared' comprised only around 4% of the total products in the supermarket. Of these, only around 1 in 10 'as prepared' eligible products were currently displaying HSR.

Those who were, came predominantly from four large manufacturers: Woolworths, Coles, Nestle and Unilever.

The only 'as prepared' products we recorded currently displaying HSR and scoring HSR  $\geq 4.5$  were Nestle's Milo and Nestle's (lesser known) Malted Milk. Both receive HSR 4.5 on the basis of their preparation with a limited amount of product and a cup of skim milk. CHOICE research previously submitted to HSRAC has confirmed the intuitive implausibility of this result. The example has attracted overwhelmingly negative publicity, not only because of the score itself, but also likely exacerbated by its highly visible use in marketing materials, and the product's high sales volume and popularity with children.

While the Media Monitoring report prepared for the 2 year review of HSR has not publicly been released, it is likely no other product has received such attention. The product's HSR 1.5 result 'as sold' highlights the potential marketing incentive to the manufacturer, but the application of current guidance seems against the *spirit*, if not the letter of the system.

HSRAC should be concerned because as noted above, much of this negative attention has not been towards Milo, but the perceived failure of HSR as a whole. While only one product, the effect on consumer trust can be significant and lasting, as the history of Heart Foundation's tick and its association with a McDonalds burger have shown. To ensure the sustainability of the system, HSRAC should amend current guidance for this reason alone.

The remaining products currently displaying HSR already 'as prepared' cover a wide range of HSRs (0.5-4) but with obvious groupings of products on this spectrum in different categories. For example:

- Cake mixes are concentrated at the low end – typically scoring HSR 0.5-2.0. When comparing 'as sold' vs 'as prepared' values in this category we found very little movement in HSR score. The relatively low scores obtained in both cases align with the recommendation of the ADGs.
- Plain rice, cous cous and grains prepared by adding only water scored HSR 4.0. When calculated 'as sold' these products receive the same result, and this would be aligned with the ADGs.
- Syrups and cordials displaying 'as prepared' on the basis of preparation with water scored HSRs between 0.5-2, including low sugar varieties. If displayed 'as sold' these would be (where possible) lower, but in either situation results seem reasonably aligned with the ADGs.
- Gravies, in powder 'as prepared' and liquid 'as sold' typically score the same HSR (2.5 - 3.0) suggesting they will not be impacted by any changes.
- Soups, 'as prepared' and canned received similar results (mostly HSR 2.5-4.0). A requirement to display 'as sold' would impact powdered but not canned soups. We understand consistency here to be one of the drivers of the original 'as prepared' rules. Our preferred option would retain this.
- Liquid recipe bases and seasoning mixes are the remaining categories of concern. Here, ratings for 'as sold' to 'as prepared' varied most – often from 0.5 to 4.0 for reasons already explained above i.e. because of the inclusion of vegetables, grains or meats. These preparations are unlikely to be achieved by many consumers, particularly those of low nutrition literacy or linguistically diverse backgrounds if close attention is not paid to detailed cooking instructions. For this reason, we support these products displaying 'as sold'. While likely making up a much smaller sales volume than the Milo example, we believe this category are important to resolve.

Other categories with potential to score very high (HSR $\geq 4.5$ ) but with no products currently doing so included dehydrated vegetables, protein powders, yoghurt powders, milk powders, and felafel mix. We believe these products would receive fair treatment under our preferred solution.

## Potential alternative options for 'as prepared'

**'As sold'** only: provides intuitive simplicity and easy messaging for consumers, while still allowing HSR to operate effectively within category.

**'Current rules with two further category exceptions'** These would apply to hot chocolate mixes and sauces/seasoning mixes, and could be justified given the existing singling out of breakfast cereals and breadcrumbs which must display HSR 'as sold'.

**'More than one HSR displayed'**: we believe this risks causing further confusion to consumers. One reasonable allowance could be HSR 'as sold' on FOP, with HSR 'as prepared' optionally displayed on back of pack, next to clear instructions on the preparation required to achieve that result. This would be consistent with the aims of current Food Standards Code rules on as prepared in the NIP.

**'Not eligible for HSR'**: the products most problematic in our analysis were actually similar to product categories currently excluded from HSR – in Milo's case, supplementary foods given its enrichment with a variety of nutrients, and in the case of seasoning mixes, salt and spices. Excluding these products from the system would remove their potential to cause negative publicity, but would also remove the ability to signal to consumers their low nutritional quality 'as sold'.

## Issue must not only be addressed, but also resolved urgently

The timeline currently proposed is not sufficiently urgent. While recent attention of HSRAC and the Forum to this issue is welcome, consumer and public health stakeholders first raised serious concerns with this perceived 'loophole' at stakeholder workshops surrounding the system launch in 2014.

'Priority' recognition is promising, but addressing the issue through lengthy consultation with industry is not an adequate response for the following reasons:

- Ongoing damage to the integrity and sustainability of the system overall
- Adverse public health outcomes and consumer confusion already highlighted
- Need to provide clarity to manufacturers awaiting clarification on rules before they display HSR – we believe this is nearly 90% of the products currently eligible to display 'as prepared'
- The tiny proportion of products causing real concern. Here we note the small number of products affected by this aspect of HSR Guidance, the smaller number of products currently displaying HSR by that guidance, and the even smaller number of products likely to be subject to any change given our above analysis. This tiny proportion of foods in the supermarket should not be allowed to jeopardise the survival of this important public health initiative.
- The concurrent requirement for products to comply with new mandatory country of labelling requirements by 1 July 2018, creating opportunity for any label changes required to be combined, minimising additional costs to industry.

The number of changes already made to HSR Guidance materials – 25 in total – driven largely by industry concerns and pragmatically resolved without any semblance of the consultation and implementation processes proposed in this case. We now call on government to do the same at the request of consumers.

We believe options can be considered, modelled, and reasonably resolved with relevant technical input (not necessarily reliant on industry) in a much shorter timeline than that proposed. Even if a necessary period for roll out is granted, announcement of a solution offers government an ideal opportunity to restore consumer and public health confidence in the initiative. Without this, the survival of the system is at stake.

## Conclusion

For the reasons set out above, The George Institute supports the review of the 'as prepared' HSR rules. We encourage urgent resolution of this issue, and whatever solution is selected, call on government to ensure that public health and consumer interests take priority over any subsidiary industry interests at stake.

We appreciate the opportunity to contribute to this review and the strengthening of the HSR system as part of a comprehensive strategy to improve Australian diets. Please do not hesitate to contact us should you require further information.

## References

1. Australian Bureau of Statistics, Australian Health Survey: Nutrition First Results - Foods and Nutrients, 2011–12. , ABS, Editor. 2014: Canberra.
2. Australian Bureau of Statistics, Australian Health Survey: Users' Guide, 2011-13 — Discretionary Food List. 2014, Australian Bureau of Statistics,.
3. Dunford, E., et al., FoodSwitch: a mobile phone app to enable consumers to make healthier food choices and crowdsourcing of national food composition data. JMIR mHealth and uHealth, 2014. 2(3): p. e37.