Public Health Association of Australia
submission on the form of the food (‘as prepared’) rules for the Health Star Rating system

Contact for recipient:
Health Star Rating (HSR) Advisory Committee
Department of Health
E: frontofpack@health.gov.au

Contact for PHAA:
Michael Moore – Chief Executive Officer
A: 20 Napier Close, Deakin ACT 2600
E: phaa@phaa.net.au T: (02) 6285 2373

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PHAA submission on the form of the food (‘as prepared’) rules for the HSR

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Introduction

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia. The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

Preamble

PHAA welcomes the opportunity to provide input to the form of the food (‘as prepared’) rules for the Health Star Rating system. The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. The Australian Government, in collaboration with the States/Territories, should outline a comprehensive national cross-government framework on promoting a healthy ecosystem and reducing social and health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.
PHAA Response to the consultation paper

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.

The PHAA has supported HSR since its inception on the basis that an interpretive front-of-pack nutrition labelling is one component of a comprehensive national nutrition strategy. By providing simple, at-a-glance nutrition information, HSR has the potential to help consumers make healthier choices on the occasions they are selecting packaged food. 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 they are following the current Guide to Industry to the HSR Calculator. However, we believe that in its current form, the Guide may be producing outcomes that are unfair and misleading. Specifically we see the following 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 typically drained, reconstituted or intended to be prepared or consumed with at least one other food.

On back of pack, these provisions typically result in parallel display of multiple nutrient profiles for consumer comparison: with the food ‘as sold’ presented alongside that obtained when the food is prepared as described at the top of the ‘as prepared’ column and directed elsewhere in detail on pack.

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 ‘as sold’ and ‘as prepared’ comparison, and without any intuitive link between the HSR displayed and the actual 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 the aims and objectives of HSR as a public health and consumer choice initiative and therefore, being part of the guide to industry rather than the algorithm (that has a five year no-change policy) ought to be rectified as soon as possible.

Potential inconsistency with Australian Consumer Law:

HSR Guidance in its current form is also potentially inconsistent with provisions of the Australian Consumer Law.

A 2015 decision of the Australian Competition and Consumer Commission (ACCC) relating to Uncle Tobys Oats is illustrative of the issues at stake. In that case oats were labelled a ‘Natural Source of Protein’, and noted in fine print that 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 are not a major source of protein in the Australian diet, the ACCC found the dominant impression created by the packaging was false and misleading for consumers. The manufacturer was fined $32,400.
Arguably, the current application of ‘as prepared’ HSR guidance, for example on Nestle’s Milo, are producing similarly problematic results. Rather than directing disappointment at individual products or manufacturers, or at this particular ‘loophole’, ongoing negative media suggests the public see such examples as representative of the failure of HSR as a whole.

Consumer laws reflect community thinking. Perhaps this explains why the strong community reaction against the Milo example and, additionally, with HSR as a whole. Allowing a small number of anomalies that are potentially inconsistent with consumer laws to undermine the HSR system calls out for an immediate rectification.

For industry:

PHAA notes that the purpose of the HSR is to protect public health through better information about the food products we consume. Therefore, public health should be the primary concern in this review, with impacts on industry and profits being secondary.

This notwithstanding, industry may also have concerns with current Guidance, given benefits of the rules are not enjoyed equally by all manufacturers. Guidance materials state, for example, that breakfast cereals (which traditionally have displayed a variety of as prepared values in the NIP) must display HSR as sold. Breadcrumbs are also specified as an example which, while typically not eaten alone, can be consumed in a variety of ways and are thereby directed to display HSR as sold, presumably to avoid consumer confusion.

This stands in contrast to examples such as burger seasoning mixes recently appearing on shelves with HSR ‘as prepared’. Though their package contents are primarily made up of salt and additives, these products are able to 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 (which would have an even healthier nutrition profile if consumed without the addition of seasoning mix) are not able to enjoy the benefit of using HSR on their own products as they fall outside the scope of the current system.

Both packaged food manufacturers and other sections of industry producing fresh items ought therefore be concerned that current Guidance does not create a level playing field.

For alignment with the dietary guidelines:

In order to operate effectively as a component of a national nutrition strategy, it is critical that HSR is aligned as closely as possible with relevant Australian and New Zealand Dietary Guidelines.

Many of the food categories conferred a benefit by current ‘as prepared’ Guidance are not themselves recommended by the Australian dietary guidelines. As noted above, the rules currently allow these products to derive benefit from valuable nutrients in whole foods contained in ‘as prepared’ formulations.

The current HSR ‘as prepared’ provisions may produce different outcomes for foods that are to be reconstituted with water, from those that are drained with liquid other than water, or intended to be prepared or consumed with at least one other food (such as milk). While presumably unintended, there appears to have been little consideration of these potentially different outcomes under the current system. The voluntary nature of the system now allows flexibility for these unintended outcomes to be rectified.
Please provide your views on the options previously discussed by the HSR Advisory Committee (HSRAC)

1 - Status Quo
For the reasons already 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.

2 - Clarification of existing rules
In this option, products ‘as sold’ becomes the default option with product specific exceptions for ‘as prepared/rehydrated/drained’.

In this option, PHAA is concerned about the need to differentiate between products requiring hydration with water or drainage of water from products requiring hydration with or hydration from other substances, liquids or foods (such as brine or milk). There are potentially different outcomes for these categories, rendering them qualitatively different from each other.

If this issue cannot be resolved in this option, PHAA would not support it.

3 - Restriction of existing rules
Among those currently proposed, we prefer a slightly modified version of this option.

All products would display HSR ‘as sold’ or as rehydrated (i.e. made up with water only) or drained of water only, with no further exemptions.

In practice this would mean that all products that need to be mixed as ingredients that are not water prior to consumption would have an HSR ‘as sold’ i.e.: drink flavourings, sauce/spice mixes, cake/pancake mixes. Consumers will still be able to compare the relative healthiness of these items within their categories by the HSR displayed.

All products that are rehydrated with water only or drained of water only would display an HSR ‘as prepared’: powdered soups, rices and grains, coffee mixes, cordial, gravy.

This option is consistent with the current Food Standards Code provisions on the display of the NIP for certain products.

We believe this is a pragmatic compromise that retains the public health and consumer choice objectives of the system, allowing for reasonable use of ‘as prepared’ in cases where it is intuitive to consumers, without allowing manufacturers to derive undue benefit from nutrients not contained in the pack.

We do not believe further exemptions are justified.

Please provide other relevant information and insight, including other potential options for the ‘as prepared’ rules.

‘As sold’ only
While attractive in its apparent simplicity, PHAA would not support ‘as sold’ being applied to all products without exemption. This would lead to perverse outcomes, which is why the ‘as prepared’ rules were negotiated originally. The exemptions to ‘as sold’ need to be refined, as suggested above, but are still required.
Multiple star ratings

It may be possible for some products to have more than one HSR – one for ‘as sold’ and one for ‘as prepared’. However, one of the main reasons for the effectiveness of the HSR is its simplicity, and having more than one rating would risk diminishing this.

If the intention of the ‘as prepared’ rules was to align with the multiple nutrient profiles on the NIP for some products, it may provide more clarity to align the display of the multiple HSR to the NIP. The standard ‘as sold’ HSR would appear on the front of the pack, with both the ‘as sold’ and ‘as prepared’ HSRs appearing alongside the NIP elsewhere on the pack. This would minimise the likelihood that the simplicity of the HSR would be compromised, while allowing more detailed information to be provided. There would need to be close alignment of the ‘as prepared’ HSR and ‘as prepared’ nutrient profile, to ensure this system did not introduce confusion. Where the ‘as prepared’ HSR is derived from adherence to a recipe provided on the pack, it would need to appear alongside that recipe, with clear labelling that the rating only applies if the recipe is followed.

Timeline for resolution

We note the recent attention of HSR leadership to this issue, including at the HSRAC meeting on 14 February 2017 and the Forum of Food Regulation on 28 April 2017. We also note the significant concerns of consumer and public health stakeholders raised in relation to this matter since the system’s adoption, and the ongoing disproportionate and negative media attention this perceived ‘loophole’ or anomaly has raised.

While promising that it is now recognised as a ‘priority’, we believe action must occur more rapidly than the timeline currently proposed. This is due to the ongoing reputational risk and consumer confusion already highlighted, but also because:

- It has been suggested many potentially impacted products are withholding adding HSR until this matter is addressed;
- Numbers of products already displaying HSR ‘as prepared’ and directly impacted by any change represent a small proportion of the supermarket, and those subject to a significant change are likely to be even smaller - this tiny proportion should not be allowed to jeopardise the ongoing integrity and utility of the system for consumers, public health, and the rest of industry not affected.
- There have already been twenty five other changes to Guidance for Industry, none of which appeared to have required such extensive consultation and approval. Most of these have been at the request of industry and resolved quickly and pragmatically – we now call on government to ensure same is done here at the request of public health organisations and consumers.
- Recent amendments to mandatory Country of Origin Labelling requirements provide evidence of industry’s capacity to amend labels within a much shorter timeframe, and create an opportunity for changes to be combined and integrated in order to minimise costs.

Even if implementation requires longer to changes being on shelves, we suggest government find and publicly announce a reasonable amendment as a matter of urgency. We see this as a positive opportunity to respond to public feedback and lead action likely to impact a small number of products for the purposes of preserving the integrity, utility and sustainability of the wider system for all stakeholders towards the five year review and beyond.
Conclusion

PHAA supports the broad directions of the review of the ‘as prepared’ rules for the HSR. However, we are keen to ensure the primacy of public health considerations in this process, in line with this submission. We are particularly keen that the following points are highlighted:

- Public health must be the primary concern in the re-configuring of the ‘as prepared’ rules
- This issue must be resolved rapidly to ensure viability and integrity of the system up to and beyond the 5-year review.

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to the strengthening of the HSR system.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

Michael Moore BA, Dip Ed, MPH
Chief Executive Officer
Public Health Association of Australia

Professor Amanda Lee
PHAA Co-Convenor
Food and Nutrition Special Interest Group

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