



5 June 2020

Front-of-Pack Secretariat
Food Regulation Standing Committee
Department of Health
GPO Box 9848
Canberra ACT 2601
AUSTRALIA

Email:

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Implementation of changes resulting from the Health Star Rating System Five Year Review – Stakeholder Engagement, May 2020*.

Yours sincerely

Katherine Rich
Chief Executive



***Implementation of changes resulting from
the Health Star Rating System Five Year
Review – Stakeholder Engagement, May
2020***

**Submission by the New Zealand Food & Grocery
Council**

5 June 2020

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Implementation of changes resulting from the Health Star Rating System Five Year Review – Stakeholder Engagement, May 2020*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

BACKGROUND

3. The Forum on Food Regulation (the Forum) requested that the Food Regulation Standing Committee (FRSC) provide further advice on several recommendations and develop an Implementation Plan for changes to the HSR system. A key consideration for the Implementation Plan is the start date, noting that a two-year transition will apply. In the interest of collaboration and transparency, FRSC has invited feedback on the proposed start date of 1 October 2020. In considering the appropriateness of the implementation start date, FRSC also provided two options for calculators reflecting differing algorithms. Calculator 2 was subsequently updated during the consultation period.

OVERARCHING COMMENTS

4. NZFGC supports a conditional commencement of 1 October 2020 SUBJECT to:
 - 1) Finalisation of the Style Guide on 31 August 2020 (30 days prior to commencement) following industry consultation that should commence early July 2020 and certainly prior to the next Forum meeting on 22 July 2020;
 - 2) Proceeding with Calculator 1 and anomalies addressed as identified below;
 - 3) Finalisation of the metrics for baseline data and information about whether and how imported products might be captured;
 - 4) Inclusion of stock-in-trade provisions;
 - 5) Alignment as far as possible with other changes coming through the FSANZ development process in order to minimise the impact to industry;
 - 6) Consumer communications about changes are made clear through coordinated messages from all jurisdictions;
 - 7) Consumer education plans are clear and not just left to the school education system or industry.
5. All the reasons for conditional support are set out in Detailed Comments below. In summary, we would highlight that the start date must be linked directly to the completion of an updated Style that is circulated to industry, key users of the Guide, for comment prior to finalisation. Industry should have 30 days to commence changes just as, in New Zealand, we have 30 days from gazettal of any legislative change.
6. Impacts from Calculator 1 are substantial. Even so, Calculator 1 is favoured by industry because of the rationale (the Calculator is supported by health and nutrition objectives) and extensive engagement in its development. Nonetheless there are key anomalies that need addressing before finalisation:

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- i. Dairy
 - ii. Definition of flavoured waters
 - iii. Juice drinks and their reformulations to reduce sugar by half not reflected in stars
 - iv. Imports
 - v. Definition of minimally processed fruits and vegetables to include no added sugars
 - vi. Equal treatment of saturated fat across all applicable food categories including all dairy categories
 - vii. Anomalies presented by use on confectionary.
7. Stock-in-trade provisions until sold (beyond 2 years) are needed to address long-life products which have been in high demand during COVID-19. These will go beyond the transition period.
 8. Consumer communications about changes need to be made clear through coordinated messages from all jurisdictions and through all channels available to make it clear these are not initiated by industry nor is this industry trying to game the system. They also need to explain why there may be two products on the shelves that are exactly the same but with different HSRs on them.
 9. Consumer education plans are clear and not just left to the school education system or industry. While this may be 'subject to funding', for reformulation to continue apace to assist in addressing obesity, it is essential that education is committed to before the Implementation date is finalised. Industry needs to know it is not acting in isolation on an issue of national importance.
 10. Finally, all businesses are managing the supply chain challenges resulting from Covid-19. This has taken priority for many over further consideration of impacts of the Calculators especially the newly introduced Calculator 2 on products. Given there has been no transparency of, or engagement about, the additional changes, industry remains strongly opposed to the adoption of Calculator 2.

DETAILED COMMENTS

Commencement

11. HSR commenced originally on the date Ministers made the decision that Australia and New Zealand should implement a voluntary HSR system on 14 June 2013. By December 2013 the algorithm for a number of products, notably dairy, was still being refined, anomalies addressed and the inclusion of "evidence-based research and extensive industry consultations in the absence of a regulatory impact statement which was not agreed by the Forum" was a direction from the Forum Chair to the Australian Department of Health.
12. Twelve months later on 27 June 2014, New Zealand announced it would join the system. The Style Guide was made available shortly after but without New Zealand input and without graphics for industry. An industry kit with these features was not available until March 2016.
13. The issue is the commencement date has always been taken as 27 June 2014 before New Zealand had implemented joining and before industry in either country had the level of guidance that would facilitate uptake. As a result, the two year evaluation and five year review which subsequently took place used June 2014 as the start date and yet there were several issues still being sorted with industry for 18 months after.

14. NZFGC does not want a repeat of this misplaced timing. When the clock starts on commencement of the updated system, the Style Guide and calculator needs to be in place. We need to look at what is actually in the final draft of the Style Guide in order to have confidence in what will be implemented going forward, before industry can commence solid work on the revision of its extensive artwork.

15. Nor does NZFGC want to be discussing the basis for uptake up to 2023.

Conditional Support for Commencement

16. NZFGC supports a commencement of 1 October 2020 SUBJECT to

- a) Finalisation of the Style Guide on 31 August 2020 (30 days prior to commencement) following industry consultation that should commence early July 2020 and certainly prior to the next Forum meeting on 22 July 2020;
- b) Calculator 1 is proceeded with but the several anomalies must be addressed as identified in the sections below covering imports, dairy, definition of flavoured water, reduced sugar juice drinks, confectionary, equitable treatment of saturated fat and definition of minimally processed fruits and vegetables;
- c) Consumer communications about changes are made clear through coordinated messages from all jurisdictional governments (National, State and Territory);
- d) Consumer education plans that are clear and not just left to the school education system or industry;
- e) Finalisation of the metrics for baseline data and information about whether and how imported products might be captured;
- f) Inclusion of stock-in-trade provisions especially for long shelf-life products;
- g) Alignment as far as possible with other changes coming through the FSANZ development standards process in order to minimise the impact to industry.

Concerns to be addressed before Commencement

17. Some of our concerns that need finalisation before commencement:

- 1) Imports: Are imports included and if so, where is the guidance for importers?
- 2) Dairy: 'Chilled dairy desserts' e.g. mousse or custard, have been moved in the new algorithm to the 'Core Dairy - yoghurt and soft (unripened) cheese' category, but frozen dairy-based products remain in the 'Non-core foods' category. If a chilled mousse product scored 3.5 stars under the current system it now scores 3 stars under the proposed system whereas a frozen version with exactly the same ingredients would receive 3.5 stars.
- 3) Definition of flavoured water: The definition of flavoured water has been changed from the original proposed definition in the review report recommendations as agreed in principle by the Forum. Flavoured water cannot contain salt but it is not clear if this means sodium chloride. If so, sodium chloride is also captured in the initial definition as it is clear that 'nothing else' is permitted to be added which would include sodium chloride. What about mineral salts used in soda waters and mineralized waters? Non-dairy beverages are not a food that contribute to sodium intakes in Australian or New Zealander diets, and this should be addressed.
- 4) Reduced sugar juice drinks: Juice drinks which have been reformulated substantially to have a reduced total sugar content do NOT benefit from any change in HSR when compared with the regular fruit juice equivalent. A full fruit juice that scores 2.5 stars is the same score for its 50% water mixed juice product and the same fruit drink. This has the potential to greatly confuse consumers when they are seeking healthier options.

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- 5) Confectionary: Use in confectionary could potentially discredit HSR by providing these types of products with anywhere from a 0.5 to 3.5 star rating (often with similar energy levels) and thereby not providing consumers with a commonsense labelling system. Confectionary, for instance, which is labeled 2.5 – 3 stars may be interpreted by a consumer as being nutritious and good for you. To assist consumers in making informed decisions, NZFGC promotes voluntary labels such as Be Treatwise which encourages mindful eating and portion control.
 - 6) Saturated fat: Saturated fat should be treated equally across all applicable food categories by applying the saturated fat scoring from the current Category 1, 1D, 2, 2D tables to Category 3D foods. We note the differences in these tables has been carried over from the NPSC, however, scientific evidence has been provided repeatedly to substantiate the (at least) equal treatment of saturated fat across these food categories.
 - 7) Minimally processed fruits and vegetables: Does the definition of minimally processed fruits and vegetable need to specify no added sugars? It says sugars and sweeteners at the moment – it might be helpful to also specify added sugars to capture the other added ingredients that might provide sweetness and KJ but don't fall under a sugar definition.

Baseline data

18. Commencement must be linked to finalisation of the baseline data and clear guidance on imported products or we are all in the dark not knowing where to best target encouragement and assistance to manufacturers and potentially importers.
19. This needs to be made clear at the outset. What are the products covered, what is the current baseline are particularly needed? We note the HSR Five-year report estimated 16% of all products would be affected (10% receiving a reduced HSR and 6% receiving an increased HSR) but that since uptake was only 20-30% of affected products then this would mean 3-5% of products requiring amended artwork to change their existing labelling¹. This estimate is now out of date.
20. We know that with subsequent algorithm changes the impact is higher but it is unclear what the baseline is. This all unfairly penalises early adopters, particularly those businesses that committed to adding HSR to their full range. Stock-in-trade will be vital to these companies in particular.

Stock-in-trade

21. Stock-in-trade provisions until sold (beyond 2 years) are needed, especially to address long-life products which have been in high demand during COVID-19.
22. Stock-in-trade provisions are a common feature of amendments to food standards and it is important to have Government support for stock in trade to address truth in labelling concerns with the use of HSR. Without these the industry is being set up for compliance and enforcement action.

Communications and Education

23. Consumer communications about changes are needed to ensure consumers are clear that governments are central to the continued success of HSR.

¹ p59-60 HSR System Five Year Review Report, May 2019

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24. This requires coordinated messages from all jurisdictions and through all channels available to make it clear the changes being made are not initiated by industry nor is this industry trying to game the system. Q&As should also be included.
 25. These messages need to be shared with industry so that helplines have them to hand when consumers call.
 26. It is not enough to say 'we'll wait until products appear on shelf'. The media won't wait that long.
 27. Consumer education plans need to be made clear and not just left to school education systems or industry. A plan for education and advertising HSR is needed to confirm to those using the system that it is still the best way to compare products in the same category.
 28. Advertising should at least repeat previous campaigns but focus on the new features of capture the new features that respond to consumer concerns such as stars for waters and fresh fruit and vegetables.

Calculator

29. NZFGC appreciates the opportunity to have had calculators to test the changes to algorithms on. This is a huge advance of original implementation for which we are very pleased.
30. The impact of moving from the current calculator to Calculator 1 is already substantial and is supported by health and nutrition objectives. A broad range of products, both dairy and non-dairy, are impacted by Calculator 1. Some products will have dramatic reductions eg a 3-star water ice dropping to half a star. These impacts coupled with the decision for "as sold" calculations compounds decreases eg many recipe bases prepared with water plus milk (impacted by both the decision for "as sold" calculations combined and adjustments to sodium levels) will drop from 4 stars to half a star.
31. We repeat, the impact of moving from the current calculator to Calculator 1 is already substantial but it is supported by health and nutrition objectives.
32. The impact of Calculator 2 is far greater since it:
 - has been shown to be less representative of the Dietary Guidelines
 - focuses too much on single 'negative' nutrients, which ends up in core dairy products such as some cheeses scoring very low, which we believe is not aligned with current food-based recommendations
 - is not supported by whole food health and nutrition objectives and is not a balanced reflection of the overall healthfulness of a product
 - impacts a substantial, additional number of products over Calculator 1
 - delivers no clear nutritional benefit from the resulting changes
 - relies on FSANZ work that has not been published
 - has an unclear rationale for adoption.
33. In addition, the impact of Calculator 2 has not been made available to industry. It is unclear, for example, whether it was assessed using data from previous years (and now potentially out of date) thereby giving a non-representative picture of the impact of Calculator 2 when compared to Calculator 1. Calculator 2 will disincentivise the voluntary improvement of recipes to be healthier as it applies stronger penalties to sodium and sugar and therefore

results in significantly less stars, some of which could not be achieved while maintaining consumer support for products. It is potentially counterintuitive to engagement since it could irrevocably impact industry uptake.

34. We would also point out that the New Zealand industry is working closely in partnership on reformulation with the New Zealand heart foundation which include maximum levels for sodium, saturated fat and sugar on a wide range of foods.
35. Noting an updated calculator was circulated during the consultation warranting a rerun of product ranges that had been tested to that date, the result and recommendation did not change. Industry unanimously supports Calculator 1 for the following reasons:
- elements have been thoroughly modelled, consulted and discussed with industry
 - less products are impacted than are impacted by Calculator 2
 - there is better alignment with Dietary Guidelines for most products including dairy products especially (although there are still anomalies to be settled)
 - the scaling is fairer.
36. A selection of results (commercial-in-confidence) will be provided in due course.

Questions

37. The questions asked are whether a start date of 1 October 2020 have implications given:
- i. The modifications (resulting from recommendation agreed in principle)
 - ii. The additional modifications outlined in the calculator information
 - iii. The context of the COVID-19 pandemic
38. Any start date has significant implications. However, as the foregoing identifies, these can be greatly ameliorated by:
- 1) Adopting Calculator 1.
 - Calculator 2 too harshly penalises both sodium and sugar, to the extent that successful reform to retain the current HSR would be unachievable within the timeframe, and would severely impact the stability or sensory quality of products meaning businesses would lose customers and products at a time when businesses are reeling from Covid-19 impacts.
 - 2) Having the Style Guide completed and operational 30 days in advance of commencement.
 - 3) Having baseline products identified by the number as at commencement.
 - 4) Determining the approach to imports and resolving the anomalies identified especially for flavoured waters, dairy and confectionary.
 - 5) Supporting stock-in-trade provisions.
 - 6) Ensuring common messages from governments are a feature of communication to consumers
 - 7) Consumer education campaigns are clearly foreshadowed and funding allocated.
39. All businesses are still managing the supply chain challenges and the impact of the loss of the hospitality and tourist trade resulting from Covid-19 that has severely impacted demand for food and beverage products. Supermarket trade during lock downs have not replaced this lost trade. Implementing Calculator 2 would result in even further devastation to an industry already struggling with demand since the result would close off several further supply outlets in both countries.