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Business Regulation Benchmarking  
Food Safety  
Productivity Commission  
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Dear Sir/Madam,

### **Submission to Food Safety Regulation Issues Paper**

The Obesity Policy Coalition (OPC) is a partnership between Cancer Council Victoria, Diabetes Australia – Victoria, VicHealth and the World Health Organization Collaborating Centre for Obesity Prevention at Deakin University. The OPC is concerned about rising rates of overweight and obesity in Australia, particularly in children.

We thank you for this opportunity to comment on your issues paper 'Performance Benchmarking of Australian Business Regulation: Food Safety – Productivity Commission Issues Paper' (Issues Paper).

The purpose of our submission is to highlight the role food regulation plays in protecting public health and the importance of public health objectives being considered in any review of food regulation in Australia. In response to the suggestion in your Issues Paper, we are pleased to enclose submissions made by the OPC to a number of other reviews of food regulation. The enclosed submissions were made by the OPC to the:

1. Victorian Competition and Efficiency Commission's inquiry into Food Regulation in Victoria;
2. Victorian Competition and Efficiency Commission's 'Simplifying the Menu: Food Regulation in Victoria' Draft Report; and
3. Productivity Commission's Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trade: Draft Research Report.

### **Obesity and overweight in Australia and the role of food regulation.**

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.<sup>1</sup> In 2008, 3.71 million Australians were estimated to be overweight, comprising 1.76 million males (16.5% of all males)

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<sup>1</sup> Australian Bureau of Statistics. *Overweight and Obesity in Adults*. 2004-05. Cat No 4719.0 Australian Bureau of Statistics, Canberra, 2008; Linacre S. *Overweight and Obesity*. Australian Bureau of Statistics, Canberra, 2007.

A partnership with:

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with support from  
VicHealth

and 1.95 million females (comprising 18.5% of all females).<sup>2</sup> The prevalence of overweight and obesity in Australian children and adolescents has also reached critical levels and continues to escalate.<sup>3</sup> On conservative estimates, at least 23% of Australian children and adolescents are overweight or obese, and at least 6% of these are obese.<sup>4</sup>

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.<sup>5</sup> Obese adults carry an increased risk of many chronic diseases, including type 2 diabetes, cardiovascular disease and some cancers.<sup>6</sup> 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.<sup>7</sup>

The financial and non-financial costs of overweight and obesity are also significant.<sup>8</sup> 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.<sup>9</sup>

The OPC is interested in food regulation as an essential component of any multi-leveled and comprehensive strategy aimed at reducing the problems of overweight and obesity in Australia. This is because food regulation controls, or has the potential to control, many of the factors that contribute to overweight and obesity. It controls the quality and composition of food sold in Victoria, and the way food is labelled and marketed to consumers. It therefore directly affects consumers' ability to make healthy choices and directly influences the types of foods they purchase and ultimately consume.

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<sup>2</sup> Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.

<sup>3</sup> 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 Schools Physical Activity and Nutrition Survey (SPANS) 2004: Summary report*. New South Wales Department of Health, 2006.

<sup>4</sup> 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-pubhlth-strateg-food-monitoring.htm#07survey>

<sup>5</sup> 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

<sup>6</sup> World Health Organization. *Obesity: Preventing and Managing the Global Epidemic. Report of a WHO Consultation*. WHO Technical Report Series No. 894. 2000, WHO: Geneva.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> Access Economics. *The growing cost of obesity in 2008*. August 2008. Canberra: Diabetes Australia.

### The Productivity Commission's benchmarking study

We understand from your Issues Paper that the Productivity Commission has been asked by the Council of Australian Governments to benchmark the burdens imposed on business by food safety regulation (across all levels of government), highlighting where there are differences in compliance burdens between the states, territories and New Zealand. We understand that this study may also highlight areas that could benefit from further reform, including de-regulation.

We are unsure from your Issues Paper, and the Terms of Reference, whether your study is to be focussed on the burdens of food safety regulation only (i.e. regulations aimed at preventing food borne illnesses), or whether it will consider the impact and enforcement of food regulations more broadly (i.e. the impact of regulations aimed at achieving public health outcomes, such as Standard 1.2.8 - Nutritional Information Requirements and consumer protection provisions aimed at preventing misleading and deceptive product labelling).<sup>10</sup> It is also unclear whether you will consider the broader role of food regulation in achieving public health objectives (and reducing the social and economic costs of obesity and overweight).

We agree that protecting consumers from the short-term health effects of food borne illnesses, while imposing minimal burdens on industry, are important objective of food regulation. However we are concerned to emphasise that these are not food regulation's only objectives. Food regulation also aims to inform consumers about food to enable them to make healthier food choices, and protect consumers from misleading or deceptive food labelling and marketing practices. Food regulation also has a crucial role to play in reducing the social and economic costs of obesity and overweight in Australia and protecting and promoting long-term health.

We have been concerned for some time about the way Food Standards Australia New Zealand (FSANZ) deal with, or often fail to deal with, the 'public health' aspect of its primary objective to 'protect public health and safety'.<sup>11</sup> We are also concerned that state based enforcement agencies devote their resources to ensuring food safety, at the expense of preventing misleading and deceptive food labelling and enforcing food standards which aim to protect public health. These concerns are outlined in the attached submissions to the Victorian Competition and Efficiency Commission discussed below.

In your issues paper, you recognize the inequitable burdens and costs that can arise as a result of the inconsistent enforcement of food safety regulations across the states. We agree with these observations and share your concern that businesses that

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<sup>10</sup> While the Issues Paper generally suggests that the Productivity Commission's focus is on food safety only, we note that footnote 1 on page 8 of the Issues Paper states, 'Certain food safety regulations include objectives other than food safety. For example, the Australia New Zealand Food Standards Code .. includes some requirements directed at achieving 'nutrition outcomes' – such as Standard 1.2.8 (Nutritional Information Requirements) and the mandatory fortification of wheat flour (for making bread) with thiamine and folic acid within Standard 2.1.1 (Cereals and Cereal Products). The Commission has not excluded such regulations from the scope of this study where they form part of a broader suite of food safety regulations. It is also stated at page 22 of the Issues Paper that this 'study is concerned with regulation directed at assuring the provision of safe and suitable food to the public'.

<sup>11</sup> The primary objectives of FSANZ pursuant to section 10 of the *FSANZ Act 1991*, in developing, reviewing or varying food regulatory measures are (a) the protection of public health and safety; (b) the provision of adequate information relating to food to enable consumers to make informed choices; and (c) the prevention of misleading or deceptive conduct.

comply with regulations can often be at a competitive disadvantage when compared to non-complying businesses. This is the case not only in relation to compliance with food safety regulations, but also regulations that aim to prevent misleading and deceptive food labelling. When the enforcement activities of regulators are devoted to food safety issues, at the expense of preventing misleading and deceptive conduct and protecting and promoting public health, businesses that engage in misleading and deceptive conduct to make their food more appealing obtain a competitive advantage. We are of the view that state based enforcement agencies should, consistently across all jurisdictions, devote more resources to preventing misleading and deceptive conduct through proactive monitoring and enforcement (for example through random label and composition testing). Another option may be a centralized model to monitor food regulation and lessen the burden of states, territories and New Zealand.

Accordingly, we would urge the Productivity Commission not to confine its study to narrowly measuring the impact of food safety regulations on the food industry. Broader public health issues should also be considered. In particular, should any potential areas for reform be highlighted to minimise the administrative and compliance burden food regulation imposes, considerations should be given to the role of the relevant regulations in achieving public health objectives (and reducing the social and economic costs of obesity and overweight). If the Productivity Commission intends to benchmark the impact of food regulation more broadly, including regulations aimed at protecting public health (such as Standard 1.2.8 – Nutritional Information Requirements and consumer protection provisions aimed at preventing misleading and deceptive conduct), it will again be vital that not only the impact of such regulations on the food industry be considered. The public health objectives and impacts of these regulations must be the key priority for decision makers.

#### Enclosed submissions

We are grateful for your recognition that interested parties such as ourselves have already invested significant resources in drafting submission to other studies and reviews of food regulation. We are very pleased that you are happy to accept that material as part of our submission to your current study. Accordingly, please find enclosed our submissions to the following reviews:

1. Victorian Competition and Efficiency Commission's 'Inquiry into Food Regulation in Victoria', submitted 16 January 2007 (see in particular, pages 1 – 11);
2. Victorian Competition and Efficiency Commission's 'Simplifying the Menu: Food Regulation in Victoria' Draft Report, submitted 15 June 2007 (see in particular, pages 3 – 5 and pages 12 - 16; and
3. Productivity Commission's 'Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trade: Draft Research Report', submitted 31 July 2008 (see in particular, sections 3).

Consistently with all of our concerns outlined above, these submissions provide further detail of the impact food regulation has on the problem of overweight and obesity in Australia, the current inadequacies and failings of food regulation in Australia and the importance of public health (and social and economic costs) being

considered in relation to any proposed changes to food regulation. They also outline improvements that could be made to food regulation, across all levels of government, to enable it to meet its objectives of protecting public health, protecting consumers from misleading and deceptive behaviour and ensuring consumers can make informed choices about food.

If you have any questions about this submission (including any of the enclosed submissions), please contact Nicole Antonopoulos, Legal Policy Adviser, Obesity Policy Coalition on (03) 9635 5612 or by email at [nicole.antonopoulos@cancervic.org.au](mailto:nicole.antonopoulos@cancervic.org.au).

Yours sincerely,

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