

Simplifying the Menu - Food Regulation in Victoria

VicHealth Submission to Victorian Competition and Efficiency Commission June, 2007

About this submission

VicHealth and the Obesity Policy Coalition are jointly concerned about many of the recommendations made by the Victorian Competition and Efficiency Commission (VCEC) in its Draft Report. We believe that the short-term focus on reducing the regulatory burden and financial costs for food businesses will create longer term health problems and economic costs to society associated with diet-related chronic disease, lost workforce productivity and greater burdens on the health care sector. We believe that while individuals are in-part responsible for their own food choices, government plays a vital role in safe-guarding consumers from misleading and deceptive conduct and in protecting longer-term health. VicHealth believes that food regulation should be strengthened to improve the quality of the food supply and enable consumers' ability to make healthier food choices

The Draft Report has not sought to address suggestions made by the Obesity Policy Coalition and VicHealth in earlier submissions. These suggestions include:

- introduction of a mandatory, uniform system for simple front-of-pack nutrition labelling such as the Traffic Light System, to help *All* people (including disadvantaged groups) make informed choices
- stronger restrictions on marketing of unhealthy food to children
- improved labelling and limits on levels of harmful fats in foods
- making nutrition content and health claims subject to appropriate eligibility criteria (e.g. nutrient profiling) to ensure claims cannot be made about foods that are unhealthy overall.
- random nutrient sampling of foods, to enforce misleading or deceptive conduct and to monitor micronutrients in the food supply - particularly fresh foods exposed to extended storage times
- mechanisms to promote local economies and ensure an ecologically sustainable food system for Victoria.

VicHealth welcomes the opportunity to comment on some of the Draft Report's specific recommendations. We have elected to focus on the Objects of the Act, as well as those recommendations most pertinent to public health. In particular, this submission:

- Highlights the need for longer-term public health to be defined as an Object of the Act
- Voices concerns we have with recommendations: *7.1, 7.3, 8.1*
- Expresses our support for recommendations: *7.4 and 8.4*

About VicHealth

The Victorian Health Promotion Foundation (VicHealth) fosters change in the social, cultural and physical environments that influence the health of all Victorians. Underpinning the work is the belief that health is a fundamental human right; that everyone shares in the responsibility for promoting health; and that everyone should benefit from improved health outcomes.

Healthy eating is the foundation of good health. Improving consumption of nutritious foods (in particular, fruit and vegetables) is one of VicHealth's strategic objectivesⁱ. Only one in fourteen Victorians (7%) eats the recommended number of fruit and vegetable serves per dayⁱⁱ. VicHealth notes the economic and health benefits from improving population nutrition. For example, an increase in the population's intake of fruit and vegetables by just one serve per day would save in excess of **\$160 million** per year nationally (in direct health costs associated with heart disease, stroke, and cancer)ⁱⁱⁱ. The savings in indirect costs such as lost work productivity and social costs would be substantially greater. The increasing levels of obesity are also incurring high health and financial costs. The total national cost of obesity in 2005 was **\$21 billion**^{iv}.

People in low socio-economic groups are more likely to be subject to poor nutrition. They are less likely to eat the recommended number of fruit and vegetables and are more likely to be overweight or obese. In addition, almost 1 in 20 Victorians experience food insecurity (periods where they have insufficient money to buy food)^v. In line with the objectives of *A Fairer Victoria*^{vi}, VicHealth is working with local governments in disadvantaged communities, to improve people's access to good quality, affordable, nutritious foods. Legislation should form the platform for protecting and improving the health of the most vulnerable.

On a broader level, VicHealth is committed to working with government and industry in ensuring an economically viable and locally sustainable nutritious food supply.

VicHealth Response to Draft Report

1. *Objects of the Food Act*

Overarching objectives of the Food Standards Code (which are enforced by the Food Act) are to protect public health and safety; ensure the provision of adequate information relating to food to enable consumers to make informed choices; and prevent misleading or deceptive conduct. VicHealth believes that under current commonwealth and state food regulation, consumers are not able to make truly informed choices about food and this is contributing to the growing incidence of nutrition-related disease seen in Victoria today. The Food Act currently serves to protect the public from short-term food-borne illness but doesn't provide adequate mechanisms to protect the longer term health of individuals through the provision of *accurate* food labelling, food advertising and marketing, and a system that promotes equitable access to affordable healthy food.

The Draft Report notes that there is a lack of clarity as to whether the objectives of 'ensuring food is safe and suitable for human consumption' and 'protecting public health' extend beyond reducing the incidence of foodborne illness to protecting the public from the harm caused by diet-related chronic disease. However, the Report makes no clear recommendations as to how this ambiguity can be resolved. The Report is written from the perspective that the objectives relate to reducing foodborne illness and as such, fails to acknowledge the important role food regulation has in protecting public health by reducing the harm caused by diet-related chronic disease, or that protecting public health (beyond ensuring food safety and reducing the incidence of foodborne illness) is or should be an objective of food regulation.

VicHealth believes that the protection of public health should be made an explicit object of the Victorian Food Act (rather than overarching objectives for the Food Standards Code). The objects would read:

“To protect public health by:

- a) ensuring that food for sale is both safe and suitable for human consumption.
- b) preventing misleading conduct in connection with the sale of food and
- c) the provision of accurate information to promote informed consumer choice.”

where

Public health is defined as *the protection of the public from long-term harm caused by chronic disease associated with food consumption.*

and

Food suitable for human consumption is defined as *food that meets minimum safety and quality standards; and for fresh produce: food that meets minimum nutrient profiles in addition to minimum safety and quality standards.*

noting

Long term harm caused by chronic disease associated with food consumption

Nutritious foods can help prevent chronic disease (including cardiovascular disease, cancer, diabetes, osteoporosis and dental disease)^{vii}. Nutrition related ill-health accounts for the largest burden of disease (17.4% of the total burden in Victoria in 2001). This includes the burden from obesity (8%), high cholesterol (6.1%) and inadequate fruit and vegetable intake (3.3%). The burden from tobacco smoking is 8.2%; physical inactivity: 4.1% and alcohol: 1.5%^{viii}.

and

Micronutrient decline in fresh foods stored for extended periods

The current food system is such that fresh produce is often stored for extended periods (in some cases, up to 12-18 months). This can lead to a significant reduction in nutrient composition^{ix}. For example, after 3 months in storage, antioxidant properties of apples greatly decline^x. Vitamin C levels can decline by up to 60% in some vegetables that have been distributed and stored in cold storage^{xi}. Public health recommendations of ‘2 Fruit and 5 Vegetables a day’ are premised upon approximate nutrient profiles of foods against the nutrition requirements needed to confer health benefits. Changes to the nutrient profile of our food supply needs to be monitored if we are to ensure the currency of these recommendations.

2. Response to specific recommendations

VicHealth does not support Recommendation 7.1 - That the Victorian Government should

- *support a relaxation of national standards prohibiting food businesses from making certain types of health claims, provided those claims are supported by scientific evidence*
- *press for greater consideration of nonregulatory approaches to managing health claims and a trial of the nutritional information proposal developed by the Australian Food and Grocery Council*
- *expand the forthcoming review of country of origin labelling requirements to include a broad ranging and independent national review of the labeling provisions of the Food Standards Code.*
- *actively support the rigorous consideration of nonregulatory alternatives to mandatory food standards in relation to labelling, health claims and new foods*

There is no evidence that deregulation of health claims would lead to improvements in the quality of the food supply or improve community health. Instead, there is a real risk that allowing health claims to be made without appropriate regulatory safeguards would drive consumption of unhealthy processed foods. Health claims should be subject to appropriate regulatory safeguards, particularly requirements for rigorous scientific substantiation and eligibility criteria to prevent claims being made about foods that are unhealthy overall. Mandatory requirements for nutrition labelling are necessary to protect the health and safety of consumers and to enable consumers to make informed choices. Non-regulatory approaches are inappropriate for managing food labelling. Non-compliance with labelling requirements is already a systematic problem, largely due to inadequate monitoring and enforcement of labelling requirements. A move to non-regulatory approaches for managing labelling would exacerbate this.

A mandatory uniform scheme for simple front-of-pack nutrition information labelling is required to enable consumers to quickly and easily assess the nutrient content of food products and identify whether they are healthy. This should be imposed by regulations, and based on CHOICE's principles for a simplified nutrition labelling system set out in its position paper on this issue^{xii}. The Australian Food and Grocery Council's nutrition information proposal should **not** be introduced as research indicates that consumers find percent daily intake information difficult to use and confusing^{xiii}. The diversity of the Victorian population requires any labelling information to be presented simply and consistently. The 2001 Census data indicates that 23.4% of Victorians were born overseas and approximately 20.4% speak a language other than English^{xiv}. Victoria is therefore well positioned to advocate for simpler pictorial labelling such as the Traffic Light System proposed in the United Kingdom.

There is no evidence to suggest that country-of-origin labelling is not valued by consumers. In the absence of information that indicates the true ecological impact of food products (eg the water required to manufacture, fuel required in transporting, and energy required for storing foods) country-of-origin information is at present the only proxy measure. This enables consumers to make "informed choices" about their food and the impact their choices have on future sustainability and local economies. VicHealth would strongly argue against the recommendation that country-of-origin labelling be reviewed.

VicHealth does not support Recommendation 7.3

-In relation to the use of national food standards to achieve public health objectives, that the Victorian Government support more rigorous regulatory impact assessments. A comprehensive investigation of all costs and benefits associated with a proposal, and alternative approaches, should be undertaken.

VicHealth supports the use of national food standards to achieve broader public health objectives. However, since the Food Standards Code is implemented by the Food Act and enforced at a state and local level, this must be reflected in the objectives of the Food Act, otherwise the enforcement activities of food regulators will continue to focus on food safety at the expense of food standards relating to public health. There is no justification for national food standards that are used to achieve public health objectives being subject to more rigorous regulatory impact assessments than other food standards or other aspects of food regulation.

VicHealth does not support Recommendation 8.1

- That the Food Act 1984 (Vic) be amended to incorporate principles to help regulators interpret and administer food regulation in Victoria. These principles should state that regulators give priority to reducing the incidence of foodborne illness resulting from the sale of food.

If guiding principles are incorporated in the Food Act, they must state that food regulators should also give priority to preventing misleading conduct in relation to the sale of food, and protecting the longer-term health of the public (by reducing the incidence of chronic disease associated with food consumption). Otherwise, the enforcement activities of regulators will be devoted to ensuring food safety, at the expense of preventing misleading and deceptive conduct and enforcing food standards which aim to protect public health. This will exacerbate the current situation in which enforcement of the misleading and deceptive conduct provision of the Food Act is given low priority by regulators.

As part of their role in protecting longer term public health, VicHealth believes that Environmental Health Officers should prioritise micronutrient composition testing of fresh food to ensure it is “suitable for human consumption” and that this should be reflected in the development of guiding principles.

In principle, VicHealth supports Recommendation 7.4

- That the Victorian Government update the management of its approach to addressing misleading and deceptive conduct in Victoria by: a) Consumer Affairs Victoria updating its memorandum of understanding with the ACCC for misleading and deceptive conduct, including communication and enforcement protocols. b) Consumer Affairs Victoria developing protocols to help local government enforce the part of the Food Act relating to misleading and deceptive conduct

VicHealth supports this recommendation. There is a need for improved coordination of regulators’ activities in relation to enforcement of misleading and deceptive conduct provisions. In addition, regulators should devote more resources to preventing misleading and deceptive conduct (e.g. through random food composition testing) and this should be included as a priority in any guiding principles that are incorporated into the Food Act.

In principle VicHealth supports Recommendation 8.4

- That the planned review in late 2007 of the memorandum of understanding between food regulators in Victoria identify, examine and address clear responsibilities.

VicHealth supports this recommendation. There is a need for improved coordination of food regulators’ activities to improve consistency in enforcement of food regulation. VicHealth urges VCEC to recommend that the upcoming review examine the fragmentation of food regulation across each of the Acts relating to the Victorian food supply. VicHealth recognises that the Food Act excludes Primary Production and Food Transportation, and believes that this fragments government(s) responsibility in ensuring a locally sustainable and economically viable food supply. This is of particular concern with the growing impact of climate change, drought, and peak oil crises on an accessible, affordable and nutritious food supply.

VicHealth notes the absence of any state or federal legislation containing provisions to protect rich agricultural land. VicHealth believes a single food regulator would be well positioned to ensure the integration of regulations impacting on land use (eg housing, production, food transport etc) in order to maximise valuable agricultural land, support local economies and encourage locally procured food. If the Food Act is to protect the public from long-term harm, it needs to adopt a systems approach where the food supply chain is considered more broadly, and as one that promotes equitable access to affordable healthy food. Food regulation currently fails to ensure adequate access to healthy food options for all consumers. VicHealth is concerned that current Food Regulation does not control for distribution and retail monopolies and is concerned that this impacts on the location of food outlets, food quality, competition and prices. Food regulation should stipulate appropriate formulae (for enactment by Planning Legislation) to ensure there is an even distribution and variety of food retailers for *all* communities. VicHealth-funded research indicates that there are a greater number of fast food outlets in low Socio-economic (SES) communities. Compared to higher SES communities, low SES areas have up to 2.5 times the exposure to fast food outlets^{xv}. This study also showed that men and women living in these low SES suburbs are likely to be heavier than if they lived in one of the advantaged areas.

In Summary

VicHealth thanks the VCEC for the opportunity to comment on their proposed recommendations to improve food regulation in Victoria. We hope that the VCEC can consider the issues raised in this submission and we welcome the opportunity to meet with those involved in the review to further discuss our concerns.

References

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