

In Confidence

Chair, Office of the Minister for Food Safety
Cabinet Economic Development Committee

Government position on recommendations of the Health Star Rating review

Proposal

1. I seek Cabinet agreement on the positions I will take on the recommendations of the independent review into the Health Star Rating (HSR) at the next meeting of the Australia New Zealand Ministerial Forum on Food Regulation (the Ministerial Forum). I intend to:
 - seek agreement for officials to investigate mandatory implementation of the HSR as soon as possible, while accepting the recommendation to continue with a strengthened voluntary approach until a mandatory requirement can be introduced;
 - support removing the energy only icon from the system;
 - support technical changes to improve the calculator that attributes stars; and
 - support in principle agreement to continue funding the HSR system for four years.

Executive Summary

2. On 15 November 2019, the Ministerial Forum, on which I am New Zealand's representative, will be asked to respond to the recommendations of the independent five-year review into the HSR system. Overall the review found that the system was working well but there were opportunities for improvement.
3. The HSR is a voluntary system of simplified nutrition labelling displayed on the front of packaged food and drink. The aim of the system is to provide convenient and easily understood nutrition information to assist consumers in making healthier eating choices. Healthy eating patterns improve health outcomes, increase wellbeing and reduce the risk of preventable long-term conditions such as heart disease and some cancers.
4. The review recommended continuing with a strengthened voluntary approach, setting a target of 70% uptake in the next five years, and if this target was not met, the system should be made mandatory. I intend to suggest officials investigate mandatory implementation as soon as possible, while accepting the recommendation to continue with a strengthened voluntary approach until a mandatory requirement can be introduced.
5. HSR was introduced in 2014, so I consider that industry has been given sufficient time to implement the label voluntarily. Uptake across eligible products is not consistent, the HSR label is used more frequently on healthier products limiting consumers' ability to make comparisons.

6. A mandatory HSR will ensure widespread uptake and would likely improve consumers' trust in the system. In addition this may encourage greater reformulation, which would support future work on reduction of obesity and related conditions.
7. If the Ministerial Forum agrees to investigate making the HSR mandatory further work on regulatory options, consultation, and a Regulatory Impact Assessment considering full costs and benefits, including trade implications would be undertaken. This will take some time, and in the meantime we will want to adopt the other recommendations for improvement and implement the proposed strengthened voluntary regime immediately.
8. With that in mind I intend to support the review's recommendations for improvement:
 - remove the energy only icon from the system. This option within the HSR system is used most commonly on sugary drinks and confectionery and is difficult for consumers to understand;
 - technical recommendations including making changes to the calculator to further penalise sugar and high sodium in packaged food and drinks, and giving minimally processed fruit and vegetables five stars automatically. These changes will better align the ratings products receive with dietary guidelines and consumer expectations, and decrease the ratings of many of the products; and
 - continuing in principle Australia and New Zealand government funding of the HSR system for governance and promotion. Clear messaging and consumer understanding is integral for consumers to use the HSR effectively.
9. Given decisions are made by majority in our joint food system, the preferred position of pursuing mandatory may not be possible. Should that be the case I will support the review's recommendation of strengthened voluntary uptake with targets included.

Background

Australia and New Zealand have a joint food regulation system

10. Australia and New Zealand share a food regulation system for food labelling and composition. New Zealand has one of ten votes at the Ministerial Forum along with the Australian Commonwealth and States and Territories, and decisions are taken by a majority vote. As Minister for Food Safety, I am New Zealand's representative on the Ministerial Forum.
11. At its meeting on 15 November 2019, the Ministerial Forum will respond to the recommendations of the independent review into the HSR system.

The Health Star Rating system

12. The HSR is a voluntary system of simplified nutrition labelling displayed on the front of packaged food and drink products in Australia and New Zealand, which was introduced in 2014. The aim is to provide convenient and easily understood information to assist consumers in making healthier eating choices in line with dietary guidelines.
13. Healthier eating patterns improve health outcomes, increase wellbeing, and reduce the risk of preventable long-term conditions such as heart disease and cancers; conditions which disproportionately affect our most deprived communities. As it is designed to be interpretive and simple, the HSR can be particularly beneficial for those with lower scientific literacy.
14. Evidence shows that consumers find most aspects of the HSR easy to understand, and that they find it useful when making informed choices. Evidence also suggests that the HSR has encouraged some reformulation, which provides a benefit to consumers even if they chose not to use the label.

Independent review into the Health Star Rating system

15. Soon after the HSR system was introduced, the Ministerial Forum agreed that a formal review be carried out after five years of implementation. Matthews Pegg Consulting (mpconsulting) was engaged to undertake the independent review and present the findings to Ministerial Forum members.
16. A thorough and robust review was undertaken that included extensive consultation with stakeholders in both Australia and New Zealand. The independent report was presented to Ministerial Forum members in August, and has been published on the HSR website.
17. While the review found the HSR system was performing well overall, it identified opportunities to continue to improve. The review resulted in ten recommendations which form a package of changes which aim to increase uptake of the system, improve the calculator which attributes stars, and improve the management and monitoring of the HSR system.

Investigating mandatory implementation of the improved Health Star Rating is my preferred response

18. While the independent review recommended a strengthened voluntary approach, I intend to instead ask for officials to investigate a mandatory approach.
19. For the HSR to be most effective it should be on all eligible packaged foods. This would enable consumers to more easily compare products and help to make healthier choices. Currently the HSR appears more frequently on healthier products.

20. Industry has had five years to implement the label voluntarily. The uptake of the HSR from 2014 to the first quarter of 2018 was 21% of eligible products in New Zealand. I do not consider current levels of uptake are sufficient or that the strengthened voluntary system will make enough of a difference to uptake. I believe mandatory implementation will be required to achieve a high uptake.
21. A mandatory HSR would likely provide greater incentive for manufacturers to reformulate. Reformulation provides the opportunity for health benefits to all New Zealanders, including those who do not use the label to make food choices.
22. Mandating the HSR and ensuring all intended products carry the label, would help improve trust in the system. Some consumers do not trust the HSR, and believe it is a marketing tool used by manufacturers. Public Health and Consumer groups have advocated strongly for a mandatory implementation of the HSR.

Considerations with a potential mandatory approach

23. There would be costs to industry associated with implementing a mandatory approach. However these costs can be reduced through appropriate transition periods and stock-in-trade provisions.
24. Mandatory labelling requirements need to be consistent with New Zealand's international trade obligations. This means any mandatory labelling must:
 - be applied equally to imported and domestic products;
 - fulfil a legitimate objective (such as the protection of human health and safety); and
 - not create an unnecessary obstacle to trade.
25. Notification to the World Trade Organization's (WTO) Technical Barriers to Trade Committee would be required and must allow at least a 60 day consultation period on the draft regulation, and at least a six-month period before entry into force following publication of the final measure.

Next steps if mandatory approach is agreed

26. If the Ministerial Forum agrees, trans-Tasman officials would undertake further analysis and a Regulatory Impact Assessment considering the full costs and benefits, including trade implications, and full consultation with stakeholders.
27. The Ministerial Forum would make a final decision on whether to make the improved HSR mandatory once Officials have completed this work, which may take a year or two. I will come back to Cabinet before a final decision is taken at the Ministerial Forum. Any final decision is likely to include a transition period before the HSR was fully mandatory.

Strengthening voluntary uptake of the Health Star Rating in the meantime

28. The review recommended continuing with a strengthened voluntary approach, with a 70% uptake target for the next five years, and that if this target was not met, the system should be made mandatory. They found that attention should be focused on improving the system, and continuing to incentivise uptake.
29. The justification for continuing strengthened voluntary implementation with uptake targets includes:
 - Alignment with principles of best practice regulation, including the New Zealand Government Expectations for Good Regulatory Practice.
 - Continuing with a voluntary scheme acknowledges and builds on the goodwill of current participants and uptake targets make Government expectations clear.
 - A voluntary system can be flexible and responsive, allowing the system to align with the rapid changes to the food supply and consumers' expectations.
 - Voluntary implementation is less costly for producers and therefore more trade facilitative than a mandatory scheme and would not require notification to the WTO.

Target and length of time for uptake

30. The review recommended an uptake target of 70% of target products in five years. The uptake of the HSR in the first quarter of 2018 was 21% of eligible products in New Zealand. This uptake includes the use of the energy only icon. I intend to support a recommendation to remove this from the system. The 70% target will be more challenging for industry to meet if the energy only icon is removed. This target is aspirational and allows for performance to be assessed.
31. The length of time recommended by the review for industry to meet the new target, is five years from when Ministers accept the recommendations of the review. If I am unable to get agreement on investigating mandatory implementation, I intend to support this timeframe, as it balances allowing time for manufacturers to increase uptake without unreasonable delay for a potential decision to move to mandatory labelling in the future.

I intend to support removing the energy only icon

32. The review recommends the removal of the energy only icon, a current HSR option which states the kilojoules in a product. This icon is used most frequently on sugary drinks and confectionery. Many consumers do not recognise this icon as part of the HSR system, and it requires greater scientific literacy to understand and use than the standard star rating.
33. Consistent use of a recognisable label is important for consumers and for public health benefits. I intend to support the recommendation to remove this icon from the system.

I intend to support the technical changes to the calculator

- 34.** The review recommended technical changes to the calculator which assigns star ratings, which better aligns ratings with guidelines and will address many of the criticisms of the HSR. These changes include greater penalisation of sugar and high sodium foods, and changing the way ratings are calculated for non-dairy beverages, such as water, fruit juice and soft drinks. I intend to support these changes.
- 35.** As an example, with the proposed new calculator, some sugary breakfast cereals would drop from 4 to 2.5 stars, and some 100% fruit juices will drop from 5 to 2.5 stars. The changes will reduce the ratings of approximately 10% of products.
- 36.** The review also recommended giving all fruit and vegetables that are fresh, frozen or canned (with no added sugar, salt, or fat) an automatic five star rating. This better aligns with dietary guidelines, and encourages consumption of a broad range of fruits and vegetables.

I intend to support in principle continued funding of the system

- 37.** The review recommends that the system continues to be funded jointly by the Australia and New Zealand Governments for the next four years. If the Ministerial Forum agrees to investigate mandatory implementation, the funding requirements will be reconsidered as part of this work.
- 38.** If the Ministerial Forum agrees to the strengthened voluntary approach, I intend to support this recommendation in principle. Funding is integral to support governance, enable education of consumers, and to monitor consumer response and industry uptake. The exact funding details are yet to be decided.
- 39.** Previous funding has been met through departmental baselines for Vote Food Safety (a total of \$968,000 from 2016-2019) for governance, monitoring and evaluation and Vote Health (total of \$1,950,000 from 2015-2018) for consumer marketing and education. I will work with the Minister of Health to agree future funding sources.

International relations

40. International relations

Related work underway

41. Poor nutrition and obesity have many causes, and while the HSR is not a complete solution, the system complements other work in development. This includes:
- Reformulation, which is a priority area of action identified by a group of food and advertising industry representatives, in a report prepared for the Ministers of Health and Food Safety in late 2018. Under active consideration
 - Under active consideration
 - Under active consideration
 - Clearly identifying added sugar in the mandatory nutritional information panel on packaged food and drinks and pictorial sugar labelling is being considered further following a decision in August by the Ministerial Forum.

Consultation

42. The Ministry of Health; the Health Promotion Agency; the Ministry of Business, Innovation and Employment; the Commerce Commission; the Ministry of Foreign Affairs and Trade; Te Puni Kōkiri; the Ministry for Pacific Peoples; the Ministry of Education; and the Treasury have been consulted in the development of this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

43. The financial contributions for the joint system will be determined in discussion with Australia but I expect this will be within Vote Food Safety baselines.
44. I will work with the Minister of Health on future education and marketing of the HSR system for New Zealand consumers, and expect this would be funded within Vote Health or Vote Food Safety baselines.

Legislative Implications

45. If the Ministerial Forum agreed to investigate a mandatory HSR further work would be undertaken to determine the regulatory requirements. If agreed, the HSR would become part of the Australia New Zealand Food Standards Code and is then brought into New Zealand law by issuing a notice under the Food Act 2014. I will come back to Cabinet prior to a final decision being made.

Regulatory Impact Analysis

46. A Regulatory Impact Assessment will be prepared on behalf of both countries before any decision on making the HSR mandatory is made. This will contain the full range of feasible options (including voluntary and mandatory options) and analysis of the impacts including national costs and benefits.

Human Rights, Gender Implications and Disability Perspective

47. There are no Human Rights Act; New Zealand Bill of Rights Act; Gender Implications or Disability Perspective implications arising from this Cabinet paper.

Publicity

48. Once a decision is made by the Ministerial Forum, a public communique with the decision will be released. I then intend to make an announcement about the outcome. The announcement is likely to generate publicity and comment by both the food industry and public health bodies.

Proactive Release

49. Following Cabinet consideration, I intend to consider the release of this paper, with certain redactions in line with the Official Information Act 1982. This will be after the Ministerial Forum meeting on 15 November 2019.

Recommendations

The Minister for Food Safety recommends that the Committee:

1. **Note** that Health Star Ratings provide simplified nutrition information on the front of packaged food, which helps consumers make informed healthier food choices and encourages food and drink manufacturers to reformulate their products.
2. **Note** that at the upcoming Australia and New Zealand Ministerial Forum on Food Regulation on 15 November 2019, the Forum will be asked to agree by majority whether to accept the recommendations of an independent review into the Health Star Rating.
3. **Agree** that I ask the Forum to agree that officials investigate making the Health Star Rating system mandatory as soon as possible.
4. **Agree** that I accept the recommendation to continue with a strengthened voluntary approach until a mandatory requirement can be introduced.
5. **Agree** that if there is not majority support for mandatory implementation, that I will support strengthened voluntary implementation, with the view that if a 70% uptake target is not met in five years, the system will be made mandatory.
6. **Agree** that I support the removal of the energy only icon from the Health Star Rating system.
7. **Agree** that I support the recommendations relating to technical improvements to the system and the management of the system.
8. **Agree** that I support the in principle continued Government funding of the Health Star Rating system.
9. **Note** that I will consult Cabinet further before a final decision to make the Health Star Rating mandatory is made by the Ministerial Forum.

Authorised for Lodgement

Hon. Damien O'Connor
Minister for Food Safety