

Commonwealth of Australia  
House of Representatives Standing Committee on Health and Ageing

Inquiry into Obesity in Australia

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Submission by:

**A/Professor Roger Magnusson,**

**The problem of population weight gain: what can government do?**

1. I am an Associate Professor of Law in the Faculty of Law, University of Sydney. I am a public health lawyer, and my current area of research relates to legal and regulatory approaches to preventing obesity and other risk factors for the chronic, non-communicable diseases that Australians overwhelmingly get sick and die from. These diseases include heart disease and stroke, diabetes, cancer, and tobacco-related diseases generally.
2. The role of law and regulation in preventing population weight gain is widely misunderstood. Properly understood, law may enhance the capacity of individuals to make healthier decisions while avoiding manipulation; it may better protect the health of children and also enhanced the ability of parents to fulfil their responsibilities to promote and protect their children's health.
3. I am the author of two articles and an editorial that are about to be published in the on-line, open source journal, *Australia & New Zealand Health Policy*. The abstracts for these articles are attached to this submission. The first article is called: "**What's law got to do with it? Part 1: A framework for obesity prevention**". This article provides a conceptual approach for identifying how legal and regulatory strategies can help to reduce obesity. The second article is called: "**What's law got to do with it? Part 2: Legal strategies for healthier nutrition and obesity prevention**". Informed by developments in the United States, this article provides a detailed, critical review of possible legal strategies for obesity prevention in Australia. These articles are part of a published symposium that is the product of a conference I convened on law and obesity.
4. The Committee will hear evidence that rates of overweight and obesity in Australia are continuing to rise, and that no society has yet been successful in stabilising or reversing the trend towards population weight gain. There is little

doubt that rising obesity rates, if left unchecked, will impose a heavy economic burden upon future governments and taxpayers, while undermining productivity and family wellbeing. The challenge for governments is to adopt a suite of policies whose combined “weight” is sufficient to resist or to compensate for the many factors that currently lead to weight gain in the Australian population.

### Different approaches to reducing population weight gain

5. Governments can respond to rising rates of obesity in Australia through three different kinds of policies. Each kind of policy is important: none should be ignored:
  - *Provider-based policies:* The first strategy is to treat obesity in a reactive fashion by treating the physical manifestations of obesity-related illness. Also, governments can try to build prevention into the primary health care system. This is being done, for example, through the Commonwealth-funded *Lifescrpts* program that is being implemented through local divisions of general practice, and through the Medicare Benefits Schedule item for a comprehensive health check on patients around 45 years of age who present with risk factors for chronic disease. Much more remains to be done to encourage prevention within the primary health care setting. However, unless policies engage with the factors that are ultimately driving the trend towards population weight gain, there is little to prevent the occurrence of new cases. Treating individuals who come in contact with the health care system will not, by itself, achieve this.
  - *Incentives for altering modifiable lifestyle risks (better nutrition, more exercise) in individuals and high-risk groups:* Government can also introduce policies that aim to change individuals’ behaviour. The main way that this is done is through health promotion, although governments could also create financial incentives; for example, by allowing private health insurance companies to offer premium reductions for private health cover for individuals who maintain a healthy weight. However, governments need to be aware that financial incentives could merely serve to increase the burden on Medicare and to exacerbate health inequalities. Government policies can also target sub-groups within the population, aiming to modify their behaviour and to improve their health. However, targeting high-risk groups will have limited benefit if the influences that are driving population weight gain are influences to which *the population as a whole is exposed, not just particular sub-groups.*

There are many factors in the broader environment that make it difficult for individuals to maintain a healthy weight. Most individuals’ attempts to lose weight fail, even with assistance from the weight loss industry. This suggests that government policies must go beyond merely trying to

change the behaviour of individuals, or targeting particular groups within the population.

- ***Policies that address the economic, social, cultural and environmental factors that influence the average behaviour of the Australian population***: Government policies can also aim to address the factors that are responsible for *patterns of behaviour* in Australian society; for example, the over-consumption of high-fat, high-salt, high-sugar foods, and our sedentary lifestyles. The aim here is not to change individuals' behaviour, but to address the impact of significant influences upon the average behaviour of the population. Policies based on this strategy have the capacity to achieve lasting change. However, they may also be controversial. Mechanisms are needed to ensure cross-departmental cooperation and shared goals. Governments need not only to introduce policies that address the various influences upon poor diet and weight gain in the population, but to develop *governance structures that are themselves capable of confronting the problem and coordinating a whole-of-government response*.

6. The remainder of this submission does two things. It suggests some key “frames” that could be used – by governments – to support and justify obesity prevention policies, and it briefly lists substantive areas where governments could explore possibilities for new regulatory policies for obesity prevention.

### **Popular assumptions about government regulation to reduce population weight gain**

7. Governments introducing policies to support obesity prevention will inevitably confront ideological resistance. Individuals fear interference in their personal lives, and business sectors are well organised to resist further regulation. Judgmental moralising supports the dominant assumption that obesity is a matter of “personal responsibility” and that governments should not get involved (and that those who let themselves become fat deserve the consequences). However, this mind-set has achieved very little in the past. “Personal responsibility” is important for individuals. However, by itself it is unlikely to provide a credible *public health* response.

### **Political frames for promoting healthy policies & laws**

8. Fortunately, there are some important and powerful frames that provide weighty ideological support for determined government efforts to reduce population weight gain. For example:

- ***Consumer empowerment***: Individuals have an interest in having access to information to enable them to make rapid and healthier decisions at point of purchase, in supermarket aisles and restaurants. There are many laws and policies that could better support truth-in-labelling, and better

indicate foods that should be used very sparingly in a balanced diet (high-fat, high-salt fast foods; sugary drinks etc). Businesses that would resist such measures should be challenged: why are you afraid of consumers having a better understanding of the nutritional value of your product? Australians need to make healthier food choices. *Consumer empowerment* is a powerful frame for justifying measures to better inform consumers and to encourage healthier food choices.

- ***Support for parents:*** No one questions the right and responsibility of parents to make healthier food choices for children. And yet a substantial body of Australian research indicates that the constant advertising for high-salt, high-sugar, high-fat foods (sometimes in breach of existing legal controls) distorts and undermines parents ability to fulfil this role. People are quick to blame parents for giving in to their kids. Policies and regulatory measures that seek to reduce inappropriate influences upon childrens' diets and "pester power" serve the important goal of supporting parents in their care for children. No one can legitimately question this goal.
- ***Protecting the health of children:*** A vibrant, strong economy requires a healthy workforce. No government needs to apologise or shrink from policies and regulatory measures designed to ensure that Australian children grow up healthy and strong. Measures focused on school food, the regulation of the food environment in proximity to schools, sponsorship of school activities, health checks at school, the school curriculum and food advertising to children on TV, internet, via mobile phones etc can all be justified, if necessary, through the powerful frame of nurturing and promoting childrens' health.
- ***Reducing health inequalities:*** Overweight and obesity are more common among those with lower levels of education and fewer economic resources. There are also price differences between the cost of energy dilute (healthy) food categories (fresh fruit and vegetables) and energy dense, processed and junk foods. In remote and indigenous settlements, healthy food categories are largely absent, of poor quality, or more expensive.

Reconceptualising access to a healthy diet as a presumptive entitlement of all Australians raises many possibilities in terms of government policies. These include encouraging locally-grown foods (that reduce the carbon footprint of food), and policies specifically designed to reduce socio-economic health inequalities. No government need apologise for reducing the very significant health inequalities that separate those with more wealth and education, from those with less.

**What can governments do?**

9. The following is not a comprehensive list of areas where governments might adopt a regulatory approach to reducing population weight gain. However, based on the experience in the United States, in particular, the following are areas where other governments are actively involved:

**(i) Improving governance structures for policy leadership and health governance:** governments are increasingly searching for new cross-departmental and (in federal systems) inter-governmental structures that draw in the multiple sectors that are relevant to obesity prevention. A “whole-of-government” approach is required, with high level political leadership.

**(ii) Obesity prevention and the information environment:** government policies can encourage obesity prevention by altering the information environment in several ways. These include:

- by generating information resources for use by governments and individuals (comprehensive and ongoing nutritional surveillance is a priority);
- by mandating the provision of information to consumers to facilitate healthier food choices; and
- by restricting inappropriate advertising that has the real-world effect of encouraging an unhealthy diet.

**(iii) Economic policies for obesity prevention:** economic policies aim to improve patterns of diet and physical activity not by dictating behaviour, but by changing the costs of behaviour. Economic policies include:

- taxes to either discourage consumption of certain categories of food (eg high-fat, high-salt), or to raise revenue for obesity prevention programs. For example, the Obesity Policy Coalition has called for a reversal of the GST-free status of high-sugar breakfast cereals;
- support for the provision of fresh fruit and vegetables in communities that are “healthy food deserts”, and in socio-economically disadvantaged areas (where obesity rates are highest).
- policies to encourage the investment by both public and private employers in workplace-based disease prevention and “wellness programs”.
- greater use of “tied grants” and conditional spending to encourage healthier policies across levels of government; for example, in schools. Local governments could also make a significant contribution to improving the local environment to encourage healthier lifestyles, and to improve access to retail outlets selling healthy food. New York City Council, for example, has increased the number of permits for sidewalk carts selling fresh fruit and vegetables in poorly-served (poor) neighbourhoods.
- policies to extend the product line of the health care system into disease prevention. For example, many overweight and obese people coming in contact with the health care system are at risk of developing diabetes.

**(iv) Direct, prescriptive regulation of businesses and organisations:** For example:

- Laws and policies about school food, the school curriculum etc
- Policies for the reduction of trans fats, and salt, in foods.

**(v) Re-shaping the urban and built environment:** Governments at all levels have a role to play in gradually improving the built environment so that it better supports walking, cycling, and daily physical activity. This involves investment in physical infrastructure as well as the creation of safe and attractive local environments. Investment in public transport is important because it reduces congestion and involves incidental exercise. The debate about “energy consumed” vs “energy expended” will continue. However, policies that focus disproportionately on encouraging physical activity (energy expenditure), without confronting nutrition, and dietary factors (energy consumed), are likely to have limited impact.

10. The issues raised in this submission are considered in more detail in two articles that will very shortly be published on-line at <http://www.anzhealthpolicy.com/> . I would be happy to give evidence or to enlarge on this submission if required.

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[forthcoming in *Australia & New Zealand Health Policy* (2008)]

## **What's law got to do with it? Part 1: A framework for obesity prevention**

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### **Abstract**

This article provides a conceptual framework for thinking about the role of law in responding to population weight gain in Australia. Part 1 focuses on two core questions. Firstly, in pursuing the aim of weight reduction at the population level, what should law be trying to influence? The challenge here is to identify a model of the determinants of obesity that is adequate for legal purposes and that illustrates the entry points where law could best be used as an instrument of public health policy. Secondly, what kinds of strategies and tools can law offer to obesity prevention? The challenge here is to identify a model of law that captures the variety of contributions law is capable of making, at different levels of government, and across different legal systems.

In Part 1 of the article, I argue that although law can intervene at a number of levels, the most important opportunities lie in seeking to influence the social, economic and environmental influences that shape patterns of eating and nutrition across the population as a whole. Only policies that impact broadly across the population can be expected to influence the weight distribution curve that has shifted relentlessly to the right in recent decades. Part 2 of the article builds on this analysis by offering a critical review of selected legal strategies for healthier nutrition and obesity prevention.

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## **What's law got to do with it? Part 2: Legal strategies for healthier nutrition and obesity prevention**

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### **Abstract**

This article is the second in a two-part review of law's possible role in a regulatory approach to healthier nutrition and obesity prevention in Australia. As discussed in Part 1, law can intervene in support of obesity prevention at a variety of levels: by engaging with the health care system, by targeting individual behaviours, and by seeking to influence the broader, socio-economic and environmental factors that influence patterns of behaviour across the population. Part 1 argued that the most important opportunities for law lie in seeking to enhance the effectiveness of a population health approach.

Part 2 of this article aims to provide a systematic review of the legal strategies that are most likely to emerge, or are worth considering, as part of a suite of policies designed to prevent population weight gain and, more generally, healthier nutrition. While the impact of any one intervention may be modest, their cumulative impact could be significant and could also create the conditions for more effective public education campaigns. This article addresses the key contenders, with particular reference to Australia and the United States.