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11

Creating the Conditions for People to Lead Healthy, Fulfilling Lives: Law Reform to Prevent and Control NCDs

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Noncommunicable diseases (NCDs; e.g., cancer, diabetes, cardiovascular disease, and respiratory disease) represent a profound threat to the health of the world's population, accounting for over two-thirds of deaths worldwide and more than half of the global disease burden.[1] Globally, NCD rates continue to rise, with the prevalence of diabetes increasing by 45% between 1990 to 2013.[2] Closer to home, 90% of deaths in Australia have chronic disease as an underlying cause, and NCDs make up around 85% of the burden of disease.[3] Perhaps even more troubling is that a quarter of Australian children are overweight or obese, creating immediate problems for young people's health, and putting a future generation of adults at greater risk of obesity and NCDs.[4] The burden of NCDs places substantial stress on national healthcare systems and will continue to do so unless governments take action to address the main risk factors for these diseases: unhealthy diets, sedentary lifestyles, excessive alcohol consumption, and smoking.

NCDs were once perceived as diseases of affluence, associated with a good life and rich food, fine wines, and cigarettes. The poor seemed to have a different set of problems: malnutrition, physical

labour, and lives cut short from infectious diseases. The reality is far more complex: NCDs are now ubiquitous among the poor as well as among the rich. Rates of NCDs are higher in lower socioeconomic groups than among the well-off, as well as in other vulnerable populations, including Indigenous Australians and the homeless. The NCD burden is escalating rapidly in developing countries, with NCDs such as cancer and diabetes emerging as the leading causes of ill health, while rates of infectious disease decline. Governments in developing countries face the challenge of funding new and often expensive treatments for NCDs, within the context of health systems that are largely geared towards the treatment of infectious diseases.[5]

The forces of globalisation, trade liberalisation and urbanisation have created an environment in which highly-processed, energy-dense foods and beverages are cheap and widely available, and opportunities for active transport and recreation are in rapid decline. Travel even to isolated parts of the world and you will see pervasive advertising for Coca-Cola and Pepsi and other well-known global brands, an array of fast food restaurants, and unsafe roads clogged with cars and motorbikes, combined with little in the way of public transport. While many developed countries have introduced strong tobacco control measures, the tobacco industry has expanded into markets in developing countries, exploiting weaknesses in regulation to promote cigarettes on every street corner. The continuing toll of excessive alcohol consumption is yet another significant driver of chronic disease, even in regions of the world that once had low rates of consumption.

Globalised trade leaves developing countries vulnerable to a flood of unhealthy products entering their markets, including imports from countries such as Australia, New Zealand and the United States (see the box below). Even worse, wealthy, exporting nations will often challenge measures that aim to prevent such practices, compounding the difficulties faced by poorer nations in

trying to improve the health of their populations. Powerful industries also contest public health laws that restrict their business practices in developing (and developed) countries. In 2013, major international tobacco companies sued the Thai Public Health Ministry, successfully stalling the introduction of regulation that increased the size of graphic health warnings on cigarette packets in Thailand. Big Tobacco has also launched a concerted attack on Australia's tobacco plain packaging laws, including an (unsuccessful) case in Australia's High Court, a challenge under an investment treaty between Australia and Hong Kong, and financing the Ukraine to file a dispute with the World Trade Organisation (which the Ukraine has since withdrawn, although other countries are continuing with similar lawsuits).

As well as facing litigation and industry intimidation, countries that introduce stringent legislation can face severe economic repercussions. If states impose higher taxes or regulate, they risk losing jobs and profitable local enterprise as transnational companies move their investment to under-regulated/under-taxed jurisdictions in a 'race to the bottom'. Measures to protect public health may also conflict with fiscal policies that aim to promote economic growth, as with Myanmar's 2012 foreign investment law, which offers measures such as income tax holidays to investors like Coca-Cola.[6] Wealthy countries have the resources to protect public health legislation against attacks by industry (and other nations), but the limited resources of developing countries make it more difficult for them to defend prevention measures. An effective global response to NCDs must build domestic capacity in countries that lack the resources and technical capability for treatment and prevention. It must also protect and enhance the ability of developing countries to introduce new laws aimed at NCD prevention.

Trade policy and nutrition in the Pacific Islands: Fiji's ban on lamb flaps

In 2000, Fiji's Ministry of Commerce published the 'Order prohibiting the supply of lamb flaps' under the Fair Trading Standards Act. The ban was driven by concerns about cheap, low-quality meat being 'dumped' on the Fiji market, and by the contribution of fatty meat consumption to health problems related to NCDs. Prior to the ban, quarantine inspectors reported that 'containers full' of the meat were being imported into Fiji, mainly from New Zealand. In 2001, no mutton flaps were exported from New Zealand to Fiji (although imports slowly increased to 115.1 tons in 2005). A consumer survey showed widespread consumer awareness and support for the ban. New Zealand threatened to challenge the ban as a trade-discriminatory measure under World Trade Organisation rules, but this did not proceed because of the 2000 military coup in Fiji.[7] The ban remains in place, although the Ministry of Health has raised concerns about the effectiveness and sustainability of the ban in light of an increasing amount of banned meat sold in stores.

Standing alongside the symbols of wealth and progress — fast food, tobacco and alcohol consumption, and car ownership — are the suffering and early deaths caused by NCDs. Yet much of this burden of death and disease is preventable, and often at relatively little cost. The primary risk factors for NCDs are well-known, and the World Health Organisation ('the WHO') has identified a series of 'best buys' for addressing these risks, that is, measures that will give governments 'the biggest bang for their buck' in terms of NCD prevention.[8] Many of the best buys will require legislative and policy change to be implemented by governments, and include measures such as protecting people from tobacco smoke and banning smoking indoors, increasing excise taxes on tobacco and alcohol, reducing population salt intake, and replacing trans

fats in foods with polyunsaturated fat. In June 2015, for example, the US Food and Drug Administration required the food industry to phase out trans fats within three years. Australian research has also evaluated the cost-effectiveness of a suite of preventive measures, and has identified promising opportunities for action, including increasing taxes on alcohol and tobacco by 30%, taxing unhealthy foods by an additional 10%, and mandatory limits for the salt content of processed food.[9]

It is clear that an effective response to NCDs require governments to take preventive action at a population level, supported by a strong international governance framework, and drawing upon a multi-sectoral, 'whole-of-society' approach that engages all key stakeholders — civil society, public health groups, communities, governments, and sometimes even industry. Yet many national governments (including Australia) seem reluctant to address NCDs through a comprehensive approach that includes law reform — often for political reasons such as concerns over paternalism and the 'Nanny State'.

Barriers to NCD prevention

Strong government action on NCDs faces two main challenges. The first is that NCDs are most often perceived as a matter of individual choice. In contrast to smoking, unhealthy diets and sedentary lifestyles are thought to be the result of individuals failing to take responsibility for their own consumption choices, or of parents failing to supervise their children's eating habits and the time children spend using electronic devices rather than playing outside. According to this type of framing, government action is unnecessary. It is simply 'nannying' consumers who should know better.

It is true that NCDs involve the most basic and personal life choices: what we eat and drink, how we commute to work, whether we smoke, and what we do in our leisure time. Yet these seemingly personal choices are influenced by broad social,

economic and cultural drivers, including the role of the global food, alcohol and tobacco industries in shaping the availability of, and demand for, unhealthy products. Other factors include the availability of public transport and access to good education, health care, and housing, as well as adequate income supports for those in need. These more fundamental causes of NCDs can only be addressed by governments altering planning laws, introducing supportive social policies, and funding transport infrastructure, not by individuals simply going on diets or quitting smoking (although that's a good step too!) NCDs also take a heavy toll on national health systems, economic productivity, and social functioning, and we as a society have an interest in preventing these collective costs and in ensuring the health and wellbeing of all members of our communities.

The second barrier to government action is the popular perception of law as simply a means to ban unhealthy products, or to prohibit certain kinds of behaviour. Often we see the law in terms of restrictions, as the stop sign that prevents us from going where we want to go. Yet law is much more than that. Governments have a smorgasbord of legal options for tackling obesity and NCDs, including the power to: tax and spend (for example, taxes that raise the price of soft drinks); alter the informational environment (through food labelling or advertising bans); improve the built environment (for example, zoning restrictions on fast-food restaurants); and directly regulate business practices and products (for example, banning the use of trans fats in food manufacturing).[10] As we will explain below, governments around the world are using these and other innovative legal options to create environments in which it is easier for people to access healthy food and clean water; to be protected from tobacco advertising; and to make use of bike lanes, parks and playgrounds. In truth, law is perhaps governments' most powerful tool for creating the conditions in which people can live healthy, fulfilling lives.

An emerging global agenda

Until recently, NCDs received little political attention, at both global and national levels. The WHO devotes only 8% of its budget to NCD prevention, compared to 39% for infectious diseases and polio eradication.[11] Wealthy donors like the Gates Foundation earmark their contributions for infectious disease control, which produces quick wins and concrete deliverables. NCD prevention initiatives seem less appealing, offering few immediate outcomes and requiring long-term financial backing. In contrast to HIV/AIDs prevention or malaria control, advocates have found it difficult to generate a groundswell of political support for NCD prevention, lacking a single powerful message around which to unify their efforts.[12] Activists and governments also face the challenge of confronting the powerful transnational industries that manufacture junk food, alcohol and tobacco, with all three industries using similar tactics to prevent public health reforms: denying the health harms of their products; 'capturing' public health researchers (by funding studies that support industry interests, employing health experts in corporate positions, and sponsoring high-profile 'independent' organisations); and lobbying against the introduction of effective laws and policies.

Fortunately, there is now a growing global movement to reduce the impact of NCDs on population health, led by champions within the WHO, young (and more established) activists, and pioneering political leaders.[13] In September 2011, the United Nations devoted a high level summit to NCDs, which led to the adoption of a Political Declaration on the Prevention and Control of Noncommunicable Diseases.[14] The declaration recognised NCDs as a threat to global health and social and economic development, and called for a 'whole-of-government' and 'whole-of-society' response. The declaration encouraged states to implement a range of preventative measures and to strengthen national health systems to ensure early detection and treatment of NCDs. It also

called for international cooperation on NCDs, research and development, and monitoring and evaluation of progress on the issue.

In 2012, the WHO set the global target of a 25% reduction in premature NCD mortality by 2025 (the '25x25' goal), and a year later it adopted the Global Action Plan for the Prevention and Control of NCDs 2013–2020,[15] to which Australia is a signatory. The global action plan provides a road map and menu of policy options for states and other actors to reduce the burden of NCDs. It also sets out a global monitoring framework, including nine voluntary global targets and 25 indicators for tracking progress towards achieving the voluntary targets, with reports due in 2015 and 2020.

The UN has established a global Interagency Taskforce on NCDs to coordinate the work of the UN and the WHO, and to support national governments in setting targets and developing policies for reducing NCDs, including by addressing risk factors such as the harmful use of alcohol, smoking, salt intake, and raised blood pressure. This new global governance framework for NCDs supports existing WHO instruments that are relevant to prevention, including the Framework Convention on Tobacco Control (the first global health treaty negotiated by the WHO), the Global Strategy on Diet, Physical Activity and Health, and the Global Strategy to Reduce the Harmful Use of Alcohol. The original Millennium Development Goals neglected NCDs, but it seems likely that NCD prevention will also feature in the post-2015 sustainable development goals, at least as part of an overarching health objective.

The right to health provides a powerful underpinning for the development of a global governance framework for NCDs. The right to the highest attainable standard of health was first enshrined in the WHO Constitution, but it also forms part of other national and international human rights instruments, including the International Covenant on Economic, Social, and Cultural Rights. The right to health covers public health, health care, and

the underlying determinants of health, and contains four interrelated and essential elements, requiring that good quality health services, goods and facilities be made available to everyone, in sufficient quantity. States must respect, protect, and fulfil the right to health, including through the provision of the necessities required for good health — nutritious and safe food, basic shelter, housing, sanitation, and safe and potable water, essential drugs and the equitable distribution of health facilities, goods and services. Given the global health threat posed by NCDs, fulfilling the right to health requires that states take immediate, comprehensive action to treat and control these diseases, within the resources at their disposal.

The global framework for NCD prevention is more comprehensive than ever before, yet it is still weaker than global governance in more prominent areas of world health, such as HIV/AIDs. Leaving to one side the Framework Convention on Tobacco Control, the WHO has failed to adopt any binding norms on NCD prevention, relying heavily on voluntary state action. The targets outlined in the NCD Action Plan are non-binding, meaning that there is no way to hold states accountable if they fail to take action, and there is no way of enforcing the plan. There is no global fund for NCD prevention, as there is for fighting AIDs, tuberculosis and malaria; and no dedicated, high-profile body championing the cause. In July 2014, the UN conducted a High-Level Review and Assessment on NCDs, which concluded that national prevention efforts remain 'insufficient and highly uneven', and that the creation of new policies and plans had not necessarily translated into action on the ground.[16] This conclusion suggests the need for an even stronger global response to NCDs. The global community has come a long way, but clearly there is still room for improvement.

'This City is Going on a Diet': Oklahoma City's weight-loss campaign

In 2007, the Mayor of Oklahoma City stood before the elephant cage at the zoo and challenged city residents to lose one million pounds. Inspired by his own battle with weight loss, and upon learning that Oklahoma City was one of the most obese towns in America, the mayor began a broad-ranging campaign to help city residents eat more healthily and become more physically active. Mayor Cornett launched a website containing recipes, nutrition information, and other resources for weight loss, and encouraged local groups to add their pounds lost to a city-wide tally. He used the city's infrastructure program to create opportunities for physical activity, tapping into a 1% increase in sales tax, business loans, and funding from the federal government to build a downtown park, improve hundreds of miles of sidewalks, develop hiking and bike trails, revamp parks, and install an ice-skating rink. The mayor combined urban design improvements with education campaigns and health programs targeting neighbourhoods with high rates of heart disease, offering free medicine and check-ups in exchange for taking exercise classes. In January 2012, Cornett announced that the city had hit its goal of dropping one million pounds. The Mayor also credited his initiatives with generating a cultural shift that made healthy lifestyles a greater priority for city residents, as well as contributing to Oklahoma's revitalised economy.[17]

Innovation at local and national levels

Although recognising the limitations in many countries' response to NCDs, the 2014 UN review also discussed 'remarkable progress' at the national level, acknowledging that many countries have been spurred into action by international recognition of the NCD crisis.[18] Governments at both national and local levels are adopting new laws and regulations on NCD prevention, with

many embracing innovative, untried solutions.[19] Governments are targeting multiple points along the food supply chain in an effort to create a healthier food environment, including manufacturing, production, and sales. In 2003, Denmark established a maximum of 2% trans fatty acids in the manufacture of fried and baked goods, with New York and other jurisdictions later following suit. In 2013, Mexico levied a tax of 1 peso per litre on sugary beverages, increasing the price by 10%. Modelling suggests that the tax will reduce consumption by 15%, preventing 630,000 cases of diabetes by 2030. Early studies already show a 10% drop in soft drink purchases and a 13% rise in bottled water consumption.[20]

Some policies encourage local production through community gardens and urban agriculture, creating new opportunities for residents to access locally grown, healthy produce. Under the *Californian Urban Agriculture Incentives Act*, cities grant tax breaks to landowners who commit their land to agricultural use for at least five years. Many governments target the pervasive effects of marketing for unhealthy foods and beverages, with the United Kingdom adopting co-regulatory restrictions on junk food marketing to kids. In 2007, the US state of Maine prohibited brand advertising of unhealthy foods and beverages in schools. Other measures that alter the informational environment include the UK's 'traffic light' food labelling system, which uses green, red and orange lights to alert consumers to levels of salt, fat and sugar (and the number of calories) in packaged foods. In a groundbreaking move, San Francisco is on its way to becoming the first US city to legislate for health warnings on soft drinks.

Governments are using urban planning laws, education programs and transport sector initiatives to promote active transport and physical activity. 'Complete Streets' policies transform road design to facilitate cycling and walking, and bike-share schemes also encourage active transport. Crime prevention initiatives create urban environments that are safer for pedestrians, as do road safety strategies such as the New York City Pedestrian

Safety Study and Action Plan, a policy to address the preventable causes of pedestrian injuries and deaths. Other initiatives open up urban centres for physical activity and play. In the city of Bogotá, Colombia, officials have introduced the Ciclovía initiative, closing streets and main avenues on Sundays and public holidays to allow for recreational activities such as cycling and walking. The Ciclorutas project provides Bogotá's residents with an extensive network of bicycle paths — over 300 km around the city.

Australia lags behind in prevention

While other countries surge ahead in prevention, Australia has made little progress in combating the risk factors for NCDs. Tobacco control is the one area in which Australia can claim to be world leader. From 2012, federal legislation required tobacco products to be sold in drab brown packaging, devoid of any brand images, logos or other promotional features, and with brand and product names printed in a standard format. Australia is the first country to introduce tobacco plain packaging laws, triggering a wave of similar legislation in countries such as New Zealand and Ireland. Recent studies confirm the effectiveness of the laws, showing that plain packaging has caused an increased number of smokers to think about quitting. Plain packaging laws followed on from a long history of incremental law making on tobacco control in Australia, which has culminated in comprehensive bans on tobacco advertising, promotion and sponsorship, heavy taxes on tobacco products, restrictions on sales to minors, and large, graphic health warnings on cigarette packets. Strong tobacco control laws have contributed to a significant decline in adult smoking rates, from 24.3% in 1991, to around 13% in 2013.[21]

Despite its leadership in tobacco control, Australia lags behind when it comes to regulating the other harmful products that are linked to NCDs, that is, junk food and alcohol. Political interest in NCD prevention began in the early 2000s, prompting a parliamentary inquiry into obesity in 2008, and the establishment

of a National Preventive Health Taskforce in the same year. The federal government charged the Preventive Health Taskforce with developing strategies for addressing tobacco smoking, excess alcohol consumption, and obesity, and the Taskforce's final report contained a goldmine of prevention options.[22] Among the measures recommended by the Taskforce were: introducing food labelling on the front of packaged foods and on fast-food restaurant menus; restricting food advertising to children; expanding restrictions on tobacco promotion and mandating plain packaging; protecting young people from exposure to alcohol advertising; and introducing a minimum floor price for alcoholic beverages.

The federal government took some promising steps following the release of the Taskforce's report. As well as introducing plain packaging laws, it established a new government agency — the Australian National Preventive Health Agency — to drive prevention efforts, and entered into a National Partnership Agreement on Preventive Health, which provided funding for initiatives aimed at promoting healthy lifestyles. However, the government failed to act on many other recommendations from the Taskforce, and chose the weakest options available when it did. The government encouraged the food industry to create voluntary codes on marketing food to children, despite calls for legislation banning junk food promotions before 9 pm on television. It supported a voluntary 'health star rating system' for food labelling, giving in to industry lobbying against the traffic light labelling system proposed by health advocates. And it allowed the alcohol industry to introduce voluntary warnings on the risks of drinking while pregnant, despite recommendations that government introduce mandatory health warning labels. The government remains committed to industry engagement and voluntary action, despite evidence that such initiatives produce very limited improvements at best.

Australia has failed NCD prevention in other respects. The Treasury has not seriously considered aligning fiscal policies with prevention objectives, and Australia spends very little on prevention

compared to other OECD countries. Australia has many government guidelines and policies that are related to NCD prevention, and it has developed measurable targets in line with its commitments under the global action plan. However, there has been no comprehensive, regular reporting of Australia's progress in reducing and preventing NCDs. Research and evaluation of NCD prevention policies and programs is still under-developed, and there is a lack of vital data on health outcomes. Action on prevention seems like a case of 'two steps forwards and one step back', with the federal government recently disbanding the Australian National Preventive Health Agency and abolishing the National Partnership Agreement, with a nearly $400 million funding cut for prevention measures to the states. As a result of these changes, there is no clear policy framework under which the Australian, state and territory governments have shared objectives and goals for prevention, and there is no longer any identified funding for NCD prevention programs.[23]

It is difficult to say exactly why Australia lags behind in NCD prevention. Without a doubt, some of the challenges faced by government include the powerful food and alcohol industries, which are strongly opposed to government regulation, the entrenched position of alcohol in Australian cultural life, 'Nanny State' ideologies, and a political climate that favours deregulation and reducing red tape, often at the expense of public health goals. Yet Australia is the lucky country. Blessed with a strong economy, political stability, and a good healthcare system, we should be able to do better in NCD prevention.

NCD prevention: a call to action

The international community is waking up to the challenge of NCDs, with the WHO taking the lead in building a global governance framework for prevention. Yet, even the WHO spends only a fraction of its budget on NCD prevention compared with the overwhelming burden of disease. Countries around the world are experimenting with innovative solutions to the NCD crisis, often

drawing upon law and regulation to implement restrictions on food advertising, introduce bans on trans fats, tax unhealthy products, and create urban environments that encourage physical activity. Australia has led the way in tobacco control, so why can't we be a world leader in tackling the risks posed by junk food, alcohol, and sedentary living? We know what we need to do; what Australia needs now are courageous politicians, engaged communities, and committed activists who will champion legislative reform for the prevention and control of NCDs. The biggest winners from a comprehensive approach will be Australia's young people, who are at risk of a lifetime of debilitating diseases unless government drives forward laws that promote healthy, fulfilling lives for all.

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