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Mr Gerry McInally
Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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Dear Secretary

ACCC submission to the Senate Rural and Regional Affairs and Transport Legislation Committee's inquiry into the definitions of meat and other animal products

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the Senate Rural and Regional Affairs and Transport Legislation Committee's inquiry into the definitions of meat and other animal products.

In response to enquiries made by key industry stakeholders, the ACCC has from time to time considered the issue of animal product related descriptors used on the labelling of plant-based substitute products.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading, and product safety for the benefit of consumers, businesses, and the Australian community. The ACCC's role includes enforcing the Australian Consumer Law (ACL). The ACL is an economy-wide law of general application that focuses on fair trading and consumer protection. It is intended to provide a baseline standard for all businesses across all products and services.

Amongst other things, the ACL prohibits businesses from engaging in conduct that is misleading or deceptive or likely to mislead or deceive, or from making a representation that is false or misleading about the quality, quantity, composition or origin of products, including food products.

It is important to highlight the fact that only a court, not the ACCC, can determine whether the ACL has been contravened. The test applied by the court as to whether the labelling of a plant-based substitute product would be misleading under the ACL is to assess the overall impression conveyed to a reasonable consumer by the labelling and packaging.

When undertaking this assessment, the court takes the full context and circumstances into account. This includes matters such as specific statements made and images used and their relative prominence, placement and size. Broader contextual matters such as where the products are sold and their placement within supermarkets will also be relevant. The courts' consideration does not hinge on the use of any particular word (such as 'meat'), or any particular image.

The ACCC has not received information that demonstrates that the labelling of plant-based substitute products is an issue causing consumer detriment.

The ACCC has received very few reports about consumers being misled by the labelling used for plant-based substitute products. The few we do receive are reports from consumers and industry stakeholders in sectors that produce meat or dairy products raising concern that plant-based substitute products use animal product related descriptors (e.g. 'meat'; 'burger'; 'milk'), or pictures of animals on their labelling. However in general, the information provided by these contacts demonstrated that they had not been misled by the labelling of the products, as they were fully aware of what the relevant product was made of when viewing it for sale. These reports were more in the nature of enquiries as to whether the products were allowed to use animal product related descriptors or animal pictures on their labelling. Over the period January 2020 to June 2021, the ACCC received only eleven such reports out of around 564,000 total contacts over the same period.

The ACCC has reviewed the reports received about labelling of plant-based substitute products using animal related descriptors or animal images. In each case we considered that a court would view the overall impression conveyed by the labelling of these products as unlikely to mislead an ordinary consumer.

Further, most retailers that supply both animal derived food products and plant-based substitutes have these products located separately, rather than (for example) plant-based mince products alongside beef mince products. This makes it even more unlikely for consumers to be misled.

The ACCC considers that labelling of food products, and any claims made in promoting them, should appropriately inform consumers about the content, composition and origin. Further, any claimed health or environmental benefits should be able to be substantiated.

To date, we have not received any reports or other information to suggest that the labelling of any particular plant-based substitute product has made a misleading claim as to its health or nutritional benefits. Should a product make a claim that it has particular nutritional or health benefits that it does not, this would raise concerns under the ACL, and the ACCC would consider (in line with our [Compliance and Enforcement Policy](#)) what compliance and enforcement action may be appropriate in the circumstances. For example, if the labelling of a plant-based substitute for beef mince contained a representation that it had the same iron content as beef mince when it did not, this would be misleading under the ACL.

We will continue to consider allegations raised with us about misleading labelling of plant-based substitute products against the ACL, and considering the factors set out in our [Compliance and Enforcement Policy](#). However as noted earlier, the mere use of particular terms referencing animals or the use of animal images in and of themselves will be unlikely to mislead consumers.

Yours sincerely

Mick Keogh
Deputy Chair