

# Australian Food and Grocery Council SUBMISSION

14 MAY 2010

**TO:**  
DEPARTMENT OF HEALTH AND AGEING

**IN RESPONSE TO:**  
REVIEW OF FOOD LABELLING POLICY AND LAW



## PREFACE

### PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors. (A list of members is included as Appendix A.)

With an annual turnover of \$100 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector<sup>1</sup> is Australia's largest and most important manufacturing industry. Representing 28 per cent of total manufacturing turnover, the sector is comparable in size to the Australian mining sector and is more than four times larger than the automotive sector.

The growing and sustainable industry is made up of 38,000 businesses and accounts for \$49 billion of the nation's international trade. The industry's total sales and service income in 2007-08 was \$100 billion and value added increased to nearly \$27 billion<sup>2</sup>. The industry spends about \$3.8 billion a year on capital investment and over \$500 million a year on research and development.

The food and grocery manufacturing sector employs more than 315,000 representing about 3 per cent of all employed people in Australia paying around \$14 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia<sup>3</sup>. It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

---

1 Fast moving consumer goods includes all products bought almost daily by Australians through retail outlets including food, beverages, toiletries, cosmetics, household cleaning items etc..

2 AFGC and KMPG. State of the Industry 2009. Essential information: facts and figures. Australian Food and Grocery Council. Oct 2009.

3 About Australia: [www.dfat.gov.au](http://www.dfat.gov.au)

## CONTENTS

PREFACE	2
1. EXECUTIVE SUMMARY	5
1.1. DRAFT PRINCIPLES	7
1.2. RECOMMENDATIONS	8
2. INTRODUCTION	10
2.1. THE FOOD REGULATORY REFORM AGENDA	10
2.2. TRANS-TASMAN HARMONISATION	10
3. THE CASE FOR A FOOD LABELLING POLICY	11
4. ENSURING FOOD LABELS SERVE THEIR FUNCTION	17
4.1. LEGIBILITY, COMPRENSIBILITY, UTILITY	17
4.2. LEGAL / TECHNICAL CONFLICTS IN LABEL CLAIMS	18
4.3. POTENTIAL UNINTENDED CONSEQUENCES	20
4.4. HEALTH PROTECTION VS HEALTH PROMOTION VIA FOOD LABELS	21
5. INDUSTRY CODES AS REGULATORY MEASURE	22
5.1. DETERMINING THE APPROPRIATE REGULATORY MEASURE	24
6. NATIONAL UNIFORM ENFORCEMENT OF FOOD STANDARDS	25
6.1. STANDARD SETTING AND ENFORCEMENT ARRANGEMENTS	26
6.2. SCOPE AND ENFORCEMENT OF FOOD STANDARDS	27
6.3. A NEW ARRANGEMENTS FOR ENFORCEMENT OF FOOD LABELLING	28
7. AFGC POLICY POSITIONS ON KEY LABELLING ISSUES.	31
7.1. FRONT OF PACK LABELLING	31
7.2. HEALTH CLAIMS	33
7.3. TRANS-FAT LABELLING	35
7.4. SALT VS SODIUM	35
7.5. FOOD ADVERTISING	36

CONTENTS

7.6. DATE MARKING – FOOD SAFETY AND CONSUMER ADVICE	36
7.7. ALCOHOLIC BEVERAGES	37
7.8. WARNING STATEMENTS ON FOOD LABELS	38
8. COUNTRY OF ORIGIN LABELLING	39
9. NEW TECHNOLOGIES – GENE TECHNOLOGY, IRRADIATION, NANOTECHNOLOGY	42
9.4. ENVIRONMENTAL LABELLING	46
10. FUTURE OF LABELLING	49
11. CONCLUSIONS	50
APPENDIX 1 – AFGC RESPONSE TO QUESTIONS POSED IN THE DISCUSSION PAPER	51
APPENDIX 2 – DAILY INTAKE GUIDE LABELLING SCHEME	59
APPENDIX 3. CONSUMER ISSUES – DATA FROM THE MARKET	66
APPENDIX 4. EXCERPT FROM AFGC INITIAL SUBMISSION TO THE REVIEW	69

## SUBMISSION

### 1. EXECUTIVE SUMMARY

AFGC welcomes the opportunity to provide input to the *Review of Food Labelling Law and Policy* (“the Review”).

The Review is a critical element of the Council of Australian Governments’ focus on food regulatory reform as part of its business regulatory reform agenda. It represents a rare opportunity to establish policy principles fundamental to sensible food labelling. As such the Review has the potential to transform food labels from being a battleground of competing interests to a trusted mechanism for consumers to identify the foods they are seeking and understand how they can contribute to healthy diets and lifestyles, now and into the future.

To do so the Review must establish the basis for a food labelling regulatory policy. This will harmonise the regulatory objectives of all agencies developing labelling standards, including FSANZ, TGA, ACCC, NMI and Standards Australia, and more importantly, establish lines of demarcation between agencies. More effective management of labelling issues will result, reducing business costs, improving enforcement and benefiting consumers.

The primary function of food labels is to assist consumers to make food choices; the primary function of food labelling regulations is to protect the health and safety of consumers. Food labelling policy can assist both by recognising that:

- outcome-focused, rather than prescriptive, mandatory labelling requirements are preferential as this allows industry to take responsibility and be accountable for its food labels being readily understood by, and of value to, consumers;
- food safety, nutrition and health impacts of labelling require scientific and technical assessment, which itself is specialised and best addressed by, and left to, specialist regulatory agencies (i.e. FSANZ), with other agencies being responsible for managing other issues which may result in labelling regulations;
- health protection can be, and in some cases must be, addressed by mandatory food labelling regulations but in the absence of scientific evidence that food labelling (or lack of it) is important for health promotion, labelling encouraging healthy eating is best left to voluntary programs such as the Heart Foundation ‘Tick’, and industry codes such as AFGC’s Daily Intake Guide Labelling Scheme;
- industry codes are an acceptable and desirable way for industry to raise the performance bar higher than can be provided by black letter law in meeting the needs of consumers through targeted agreed labelling approaches, and along with black letter law, provide the basis for proportionate regulatory responses; and
- national uniform enforcement of food labelling standards through providing centralised interpretive advice is a key part of providing more consistent, and more useful information to consumers.

An effective food labelling regulatory policy has the potential for resolving long running labelling issues viz;

- **front of pack labelling** – by reaffirming the need for a firm, supportive evidence base to be established prior to the imposition of mandatory regulatory requirements and that industry codes are a legitimate alternative mechanism to full regulation;

## SUBMISSION

- **health claims** – by testing the current restrictions against a policy basis for prohibiting the flow of truthful, scientific information and advice to consumers to assist them select foods which may protect and promote good health in the context of a balanced diet and healthy lifestyle;
- **country of origin labelling** – by moving country of origin labelling out of the Food Standards Code and back to the Trade Practices Act where it more sensibly belongs, or at least providing less prescription in the Food Standards Code so more informative label statements can be made by industry;
- **GM food labelling** – by reflecting that mandatory labelling must be useful to consumers, enforceable and practical for industry to implement thereby supporting the current GM labelling standards in Australia which represent a pragmatic, rational solution to a complex issue;
- **animal welfare issues** – by noting that food labelling *per se* does not have a direct impact on any animal's welfare – production animal or in the wild - and that alternative policy instruments are more appropriate for affecting change;
- **environmental labelling**– by advising that issues such as carbon footprint labelling are not unique to food and therefore should be dealt with alternative regulatory regimes to the Food Standards Code; and
- **many other issues** such as mandatory trans-fat labelling, salt vs sodium, warning statements, date marking, and advertising.

More importantly, a national food policy can set the framework for managing a future where consumers will not be faced with limits on information availability, but rather will be contending with an abundance. Mobile scanning technology linking consumers directly to food products via barcodes promise a plethora of information about the product, particularly once the system becomes interactive allowing the customisation of information downloading.

Requiring information to be accurate, and not misleading, will continue to be mandatory for key public health and safety objectives –the remaining important information for consumers will be determined at the individual level, with consumers driving the industry to provide the information they want to know about food, how it's produced and where it comes from.

Food package labels will still carry the key information for informed choice which is currently provided - but this will be the beginning of the information flow for most consumers.

The challenge is for food labelling regulations to keep up with the revolution which is underway. The key is to establish a robust, forward focused, rational policy framework able to move with the times and remain relevant for the decades ahead. AFGC considers the first step is to agree on some fundamental principles and has drafted a number (below) for consideration by the Review.

## SUBMISSION

### 1.1. DRAFT PRINCIPLES

AFGC presents the following draft principles<sup>4</sup> for consideration by the Review:

**Principle 1.** The primary reason for mandating information on food packages is to allow consumers to make an informed choice to protect their individual health and safety.

**Principle 2.** All food labelling regulatory policies and law should be consistent with Council of Australian Government principles and guidelines for national standard setting.

**Principle 3.** Clear demarcation exist between food labelling policy and law regulating food as a consumed product (i.e. a food, ingredient, additive or processing aid), and other food labelling regulations providing for consumer or community needs.

**Principle 4.** Regulatory requirements at the interfaces between different regulatory regimes for food labelling should be aligned and equivalent with agreement regarding which takes precedent in case of conflict.

**Principle 5.** Outcomes based policies and law are generally preferable to prescriptive regulations.

**Principle 6.** Proportionate regulatory responses from black letter law through to voluntary industry codes all have a role in regulating food.

**Principle 7.** Food labelling policy and law should be interpreted and enforced in a consistent manner across Australia and New Zealand.

**Principle 8.** Food labelling policy and law should be consistent with obligations under international treaties and agreements of the World Trade Organization, *Codex Alimentarius* and World Health Organization.

**Principle 9.** Food labelling policy and law should reflect that the consumers' 'right to know' needs to be balanced against the practical difficulties and cost of providing information on the label of food products.

**Principle 10.** Food labelling policy and law should recognise that information is provided by the food industry using a number of mechanisms beyond the food label and in the absence of direct legislation.

**Principle 11.** Food labelling policy and law should recognise and respect the commercial role of food labels in differentiating products in the market place through highlighting product attributes to consumers.

**Principle 12.** Food labelling policy should reflect that labels are limited in their capability to meet all information demands of all sections of the community equally and simultaneously.

---

<sup>4</sup> The rationale behind each of the principles is presented in AFGC Submission to the Review of Food Law and Policy ([www.afgc.org.au](http://www.afgc.org.au)) .

SUBMISSION

**1.2. RECOMMENDATIONS**

That the Review:

1. consider the close ties between Australia and New Zealand through the joint food regulatory system and the integrated business operations in the food industry.
2. seek to rectify the current disarray of public debate on food labelling by advocating the development of a food regulatory policy to guide food labelling regulation in all its guises.
3. consider the food labelling policy principles proposed by AFGC as a foundation for a food labelling regulatory policy.
4. note that the legibility, comprehensibility and utility of food labelling is dependent upon consumer capabilities which can be assisted by appropriate 'in market' support from Government in the case of mandatory provisions, and industry in the case of industry codes.
5. support the regulation of labelling of food products for technical issues being the remit of appropriate technically resourced regulatory agencies to optimise the benefit to, and protection of, consumers.
6. recognise that mandatory labelling measures may come with unintended consequences.
7. agree that no firm science-based case has been made for mandatory food labelling for health promotion, and support food product labelling under industry codes and schemes such as the National Heart Foundation 'Tick' as valuable programs working in concert with other measures to promote good health.
8. note the success of industry codes such as the Daily Intake Guide and Allergen Guide labelling schemes currently being used by the food industry in Australia and NZ.
9. recognise the importance to business of certainty in interpretation and enforcement of food standards and support this issue being addressed urgently through development of a mechanism providing national uniform advice for compliance with food labelling standards.
10. note the success of the AFGC Daily Intake Guide labelling scheme both in terms of its extensive uptake by industry, and as an example of an effective voluntary code and regulatory measure managed by industry.
11. note the potential value of a well-cast food labelling regulatory policy in resolving the seemingly intractable regulatory issues of an appropriate regulatory framework for health, nutrition and related claims.
12. support the principle that legislative instruments regulating food labels extend also to food advertising, but retaining the demarcation between food as a consumed product from other considerations.
13. consider alternative options for revising Country of Origin Labelling requirements viz:
  - removing Country of Origin Labelling provisions from the Food Standards Code and giving sole responsibility to the ACCC with recommendations for food to be considered a special category in revised Country of Origin Labelling Guidelines;
  - replacing the detailed and prescriptive mandatory Country of Origin Labelling provisions in the Food Standards Code, with a "simple" mandatory requirement that the origin of the product must be declared with recommendations for food to be considered a special category in revised Country of Origin Labelling Guidelines.



SUBMISSION

14. note the complex nature of the genetically modified food debate and support the current *Standard 1.5.2 Food Produced using Gene Technology* as an appropriate, practical means of providing consumers meaningful information about the presence of food components changed as a result of genetic modification.
15. note the potentially valuable role of an overarching food labelling policy in providing guidance to the current debate on nanotechnology and food labelling.
16. note that *Standard 1.5.3 Irradiation of Food* requires the labelling of food as a result of a process (irradiation) and does not pertain directly to the food itself, and as such, should be reviewed against higher policy principles.
17. find that any mandatory environmental labelling of food products must satisfy COAG principles of good regulation and be consistent with Australia's obligations under international law; and be promulgated through legislative instruments other than the Australia New Zealand Food Standards Code.
18. find that animal welfare concerns are beyond the scope of mandatory food labelling regulations, being better addressed through other policies or schemes such as the 'RSPCA's Approved Farming' program.
19. consider the implications of new information technology applications for extending the labelling of food products; and ensure its findings are both compatible and relevant to a future where for most consumers information about food will be available in abundance and with immediacy.

## SUBMISSION

### 2. INTRODUCTION

AFGC welcomes the opportunity to make this Submission to the *Review of Food Labelling Law and Policy* (“the Review”).

This is the second AFGC submission to the Review. AFGC requests the first submission be retained for consideration by the Review. In this Submission AFGC reiterates some of the points made in its first submission and provides further information to support its positions.

The Review released a discussion paper in March which presented a number of questions about food labelling and labelling regulations for stakeholders to consider. AFGC has provided detailed answers to those questions as [Appendix 1](#) to the Submission. AFGC has chosen, however, to provide further perspectives on food labelling for the Review’s consideration within the main body of this Submission.

#### 2.1. THE FOOD REGULATORY REFORM AGENDA

The *Review of Food Labelling Policy and Law* is one of a number of activities in the food regulatory area being undertaken as part of the business regulatory reform agenda of the Council of Australian Governments (COAG). AFGC has been advocating for a number of years that the food regulatory system has not been operating as well as it should with issues relating to governance in foods standards development, lack of uniform enforcement of food regulations, and a policy vacuum across some areas of food standards, including food labelling.

**AFGC has welcomed the COAG focus on food regulatory reform and particularly the *Review of Food Labelling Policy and Law*.** It is a ‘once in a generation’ opportunity to address an area of food regulation which is particularly controversial. Reiterating a key point from its first submission AFGC emphasises the importance of aligning outcomes of the Review with the overall direction of regulatory reform agenda. This will enhance the likelihood of the Review securing substantial reforms within food labelling policy and law.

**Moreover it will enable the Review to form the foundation for an overarching food labelling policy** which in turn will set the environment for a more harmonious development of food labelling regulations and resolve many of the labelling issues which have dogged the industry, frustrated regulators and undermined consumer confidence in the integrity of the food regulatory system for so long.

#### 2.2. TRANS-TASMAN HARMONISATION

**Australia and New Zealand have been moving towards closer integration of their economies for a number of years. This has been welcomed by the food industry as it considers Australia and New Zealand to be a single market.**

Food labelling regulation through the treaty establishing Food Standards Australia New Zealand (FSANZ) and the Australia New Zealand Food Standards Code (Food Standards Code) is largely harmonised although differences exist in some areas (e.g. Country of Origin Labelling).

AFGC considers it critically important that the development of food labelling policy and law in Australia takes into account, and includes, New Zealand issues. It should do so by seeking outcomes which are applicable and acceptable on both sides of the Tasman.

## SUBMISSION

**AFGC considers that each time New Zealand opts out of the Food Standards Code it is evidence of failure to reach sensible regulatory measures – and the Country of Origin Labelling (which New Zealand has not adopted) is no exception.**

Although the Review has been convened under COAG, due consideration should be given to the implications for New Zealand.

### Recommendation

**That the Review consider the close ties between Australia and New Zealand through the joint food regulatory system and the integrated business operations in the food industry.**

AFGC, in developing this submission, has been in close consultation with its sister organisation the *New Zealand Food and Grocery Council*. Many food companies are members of both organisations and have provided input to both Councils.

**AFGC supports the New Zealand Food and Grocery Council submission to the Review.**

## 3. THE CASE FOR A FOOD LABELLING POLICY

**Food labelling has become a battleground for special interest groups seeking to promote their causes which may be only tenuously (if at all) related to food.** These groups see food labels as a way to manipulate the behaviour and attitudes of Australians to advance their own agendas. In most cases those agenda's have nothing to do with the primary role of food labelling regulations, which is to protect public health and safety.

In recent years, and in some cases through parliamentary bills, there have been calls for:

- extended **country of origin labelling** in response to producers' concerns about the levels of imported primary products;
- **meat quality product descriptors** labelling to address perceived differences between premium label claims and the product sold;
- **palm oil labelling** from concerns that palm oil demand from the food industry is driving deforestation and habitat destruction in South-east Asia although this is not the case<sup>5</sup>;
- **animal welfare labelling** of animal products with specific descriptors relating to the housing of production animals;
- **trans-fat labelling** although the latest advice from FSANZ modelling is that the level of trans-fat in the diet of Australians is well within limits set by the World Health Organization;
- **extended gene technology labelling** including the labelling of products derived from production animals fed feedstuffs derived from gene technology;
- labelling to show the **suitability for vegetarians** of foods despite the ingredients list providing this information;

---

<sup>5</sup> Stern Review of the Economics of Climate Change, International Institute for Environment and Development.

## SUBMISSION

- exchanging **salt for sodium** on food labels although sodium from all sources contributes to the total dietary intake;
- **food miles** labelling of the distance travelled by food from production to point of sale, although many studies have demonstrated that this is poor measure of environmental impact;
- **carbon footprint** labelling to indicate the amount of embedded carbon although standardised methodologies have yet to be adopted;
- **water footprint** labelling to indicate the amount of water embedded in the product although standardised methodologies have yet to be adopted;
- **warning statements** on caffeinated beverages although most caffeinated beverages contain less caffeine than a cup of coffee;
- **warning statements** on foods containing particular food additives and colours although these are considered safe by regulatory agencies around the world; and
- **full scientific names of additives** although many of these are meaningless to many consumers.

**Clearly if the wishes of all of the proponents of these proposals were accommodated on food labels, the total amount of information would be very large with the potential for substantial consumer confusion.**

When the food industry highlights the difficulty in meeting these labelling demands, or queries the real value of the information in helping consumers choose food products, it comes into heavy criticism for not being responsive to the “consumers’ right to know”. The food industry does make this type of information available to consumers either proactively on web sites or in response to consumer queries to call centres. However, given the impracticalities of responding to every mandatory labelling request, and the ready access to information through direct approaches to food companies the key question then becomes:

*“how should proposals for the mandatory labelling of foods be evaluated?”*

The answer is:

*“ through testing the proposal against a clearly stated policy framework”.*

No such framework currently exists to guide the food labelling regulations in Australia. This has resulted in the *ad hoc* development of labelling standards from a number of regulatory agencies, some of which are in conflict, whilst others are simply poorly aligned. This is not only costly for industry, but leaves other stakeholders frustrated when the reasons for particular food labelling regulatory outcomes are uncertain and in some cases contentious.

**AFGC has repeatedly called for a comprehensive food labelling policy to be established.** Such a policy is critical to providing guidance on key labelling issues such as those mentioned above, and others such as health claims and labelling which continue to vex the food industry, regulators and the wider community alike.

**Such a policy would, once and for all, remove the *ad hoc* nature of food labelling regulations development, state clearly the basis for mandating the provision of information on food labels, and the basis for prohibiting the provision of information on food labels.**

## SUBMISSION

It is, therefore, in all stakeholders' interests to remove the adversarial nature of labelling debates. Moderating expectations of what food labelling regulations can sensibly require of food companies, would be an important outcome of introducing a food labelling policy, and lead directly to a lessening of contentious, high profile food labelling debates.

AFGC considers a key element of food labelling policy would be to provide clear demarcation of labelling foods as a consumed product, and foods as a consumer product (Section 3.1.1). This single reform, would allow labelling issues to be assigned to appropriate regulatory frameworks and agencies. For example, FSANZ would be expected to deal solely with matters relating to food as a consumed product, whereas ACCC might have responsibility for other issues such as country of origin labelling (Section 8).

**Moreover, this single act would remove food labelling as the all-encompassing panacea to the ever-widening range of environmental, social and health issues which are played out in the media and public policy debates.**

### Recommendation

**That the Review seek to rectify the current disarray of public debate on food labelling by advocating the development of a food regulatory policy to guide food labelling regulation in all its guises.**

### 3.1.1. Food Labelling Policy and Law – proposed principles

AFGC considers there are a number of fundamental principles which can provide the foundation for a comprehensive food regulatory policy. These are detailed below.

**Principle 1. The primary reason for mandating information on food packages is to allow consumers to make an informed choice to protect their individual health and safety.**

Most Australians enjoy access to safe, affordable and nutritious foods, primarily due to the sophisticated application of advanced food science and technologies which have been developed over many decades. Notwithstanding this, foods can be unsafe and diets unhealthy:

- for some individuals who are intolerant or allergic to food ingredients or additives;
- if mishandled during storage or preparation for consumption; or
- if foods are not consumed in the context of a balanced diet<sup>6</sup> and healthy lifestyle.

Food labelling mitigates the risk of acute and long term health problems through informing consumers about the product and its appropriate use. Black letter law requiring some of this type of food labelling is warranted as the consequences of inappropriate food selection or food handling due to a lack of information can be severe. There is also a role, however, for voluntary industry codes (Section 4)

---

<sup>6</sup> A "balanced diet" - one in which the intake of nutrients is adequate (no more and no less) than that required to sustain the individual over a period of time.

## SUBMISSION

### **Principle 2. All food labelling regulatory policies and law should be consistent with Council of Australian Government principles and guidelines for national standard setting.**

Since the early 1990s Australian and New Zealand governments have required legislation setting to adhere to specific guidelines<sup>7</sup>. They were introduced in response to the recognition that setting regulations imposes a burden on the community, and that burden must be justified by a greater benefit. The guidelines establish a process for developing, and criteria for testing, the case for legislation. In doing so they provide:

- a logical, objective decision-making framework to assist both regulators, and the government which they serve, to develop appropriate laws; and
- a mechanism to provide accountability to the community and stakeholder groups within the community when laws are set, or proposals for laws are rejected.

Thus in simple terms, they “set the rules of the game”. This is critical to bring a convergence of views as to what matters regulation should deal with, and what it should not. Without these rules there is no way to make such determinations with the potential for regulations to reflect either the most well resourced argument, or indeed the most popular, or populist. This would not serve the community well in the short, or long term.

Food labelling policy and law is no different from other areas of regulation. Indeed, its high public profile supports the contention that it is critical that the very best, and robust processes are used to develop labelling policy and law. The absence of such processes risks divisive controversy which serves neither industry, nor regulators, nor consumers well.

### **Principle 3. Clear demarcation should exist between food labelling policy and law regulating food as a consumed product (i.e. a food, ingredient, additive or processing aid), and other food labelling regulations providing for consumer or community needs.**

The production and sale of food products is subject to many general legislative requirements most of which do not pertain solely to food (e.g. Trade Practices Act, Weights and Measures).

AFGC considers specific labelling legislation is required to regulate food as a consumed product (i.e. regulating the aspects of the nature of the product which become relevant on consumption). The Food Standards Code is the appropriate legislative instrument for such matters. Other labelling issues relating to food as a consumer product which provide for consumer benefit and protection should be dealt with in other legislation such as the TPA and Standards Australia. **This demarcation would subsequently provide guidance as to what matters should be dealt in the labelling provisions of the Food Standards Code and pursuant state and territory based food regulations.** For example, carbon footprint labelling, if mandated, would be dealt with under environmental legislation, not in the Food Standards Code (Section 9.4).

---

<sup>7</sup> Council of Australian Governments: Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Commonwealth of Australia. 2004.

## SUBMISSION

### **Principle 4. Regulatory requirements at the interfaces between different regulatory regimes for food labelling should be aligned and equivalent with agreement regarding which takes precedent in case of conflict.**

Some food products sit close, or indeed potentially span regulatory interfaces, particularly the food/drug interface (e.g. throat lozenges are regulated as a therapeutic good, but could easily be classified as food with different market positioning). In order to avoid regulatory confusion and inequitable treatment of products:

- 1) there should be no conflicting regulatory labelling requirements in different legislative regimes, and if there is, it should be clear which legislation takes precedent (i.e. an indication of hierarchy); and
- 2) there should be no advantage or disadvantage to products as a result of the regulatory regime under which they fall. This is not only important to ensure similar products are treated in a similar manner, but also removes the incentive to industry to 'game' the regulations.

### **Principle 5. Outcomes based policies and law are generally preferable to prescriptive regulations.**

The current Australia New Zealand Food Standards Code arose from a comprehensive and systematic review of the previous food standards code. The review removed many prescriptive standards and focused on the outcomes sought. For example, prescriptive standards for font size of label elements were removed, and replaced by requirements that labels had to be legible. In essence this leaves it up to the manufacture to determine how best to achieve the outcome which is viewed as more efficient both for industry and enforcement agencies.

### **Principle 6. Proportionate regulatory responses from black letter law through to voluntary industry codes all have a role in regulating food.**

Just as there is a hierarchy of issues which labelling measures can address, so there is also a hierarchy of regulatory measures which allows for regulatory responses to be proportionate. Matters of great import such as the presence of some allergens warrant black letter, others such as nutrient content labelling can be provided by industry codes. The ACCC has developed a comprehensive framework for selecting the most appropriate regulatory measure.<sup>8</sup>

### **Principle 7. Food labelling policy and law should be interpreted and enforced in a consistent manner across Australia and New Zealand.**

There is no formal mechanism for food companies or indeed the many food labelling enforcement agencies to official interpretation of the meaning of food labelling standards. This has the potential to give rise to inequity across businesses depending on the jurisdiction in which companies operate, add costs to business if enforcement is not consistent from jurisdiction to jurisdiction, add costs to regulators monitoring compliance and challenges the notion of sensible regulation. It also undermines the confidence of the community in the regulatory system. It is important that appropriate institutional arrangements are provided which allow for uniform interpretation and enforcement of label statements (Section 6).

---

<sup>8</sup> [www.accc.gov.au](http://www.accc.gov.au)

## SUBMISSION

**Principle 8. Food labelling policy and law should be consistent with obligations under international treaties and agreements of the World Trade Organization, Codex Alimentarius and World Health Organization.**

Australia is a major food commodity and food product trading nation. It is important that food labelling standards do not unnecessarily prevent or constrain trade in packaged food products, or their manufacture in Australia. The Food Standards Code and other food labelling legislation should be developed in alignment with the objectives of trade agreements and other policy agreements, and harmonises regulatory requirements with international food regulatory frameworks such as *Codex Alimentarius*.

**Principle 9. Food labelling policy and law should reflect that the consumers' 'right to know' needs to be balanced against the practical difficulties and cost of providing information on the label of food products.**

Gathering, validating and monitoring the currency of the information on food packages imposes costs on food companies above and beyond the simple costs of changing the label. Moreover, some types of information are more difficult than others to secure. In many cases the benefit of providing information greatly exceeds the cost of gathering the information (e.g. allergen labelling). In other cases the benefit may not be as great. Moreover some information is of more interest to some consumers than to others. It is important to balance providing for the information needs of consumers – and particularly small groups of consumers- with the potential cost of providing it.

**Principle 10. Food labelling policy and law should recognise that information is provided by the food industry using a number of mechanisms beyond the food label and in the absence of direct legislation.**

Food companies can, and do, provide information in many ways beyond food labels and packages. These range from simple brochures and pamphlets through to the use of the internet. More recently the use of mobile scanning devices has been introduced overseas and is foreshadowed for the Australian market.

**Principle 11. Food labelling policy and law should recognise and respect the commercial role of food labels in differentiating products in the market place through highlighting product attributes to consumers.**

Food companies are successful if they attract consumers to their products through labelling and promotional activity, and then secure repeat purchase through pleasing the consumer in the product offering. The product label therefore has a very important commercial role particularly in product differentiation and brand promotion. Labelling requirements prescribed by black letter law, or industry codes, must be carefully considered and not undermine the commercial role of food labels – it is not the purpose of labelling regulations to inhibit market place activity unnecessarily through inhibiting the commercial function of food labels.

**Principle 12. Food labelling policy should reflect that labels are limited in their capability to meet all information demands of all sections of the community equally and simultaneously.**

Ultimately most food labels are restricted in their size and therefore their capacity to carry information. There seems to be no limit, however, to the information which consumers, or at least some consumers, want to see on food labels. Clearly the two are incompatible and prioritising of information needed on food labels is required.



**Recommendation**

**That the Review consider the food labelling policy principles proposed by AFGC as a foundation for a food labelling regulatory policy.**

## 4. ENSURING FOOD LABELS SERVE THEIR FUNCTION

**The function of food labels is to assist consumers to take action** – action to select and consume food products which meets their needs, and avoid those which don't. To do that labels must be clear in the information they present, and consumers must be able to use it.

The objective of food labelling policy and law is to assist this action (see Principle 1 Section 3.1.1. Foods are, however, highly varied, as are consumers. This leads to complexity in developing food law – there is no 'one size fits all' solution. The corollary is that food labelling law must focus on outcomes and recognise that there will be many paths to securing outcomes. Through providing flexibility in regulations, rather than prescription, the best solutions for any particular situation can be found. AFGC considers that in most cases food industry is in the best position to determine those solutions.

### 4.1. LEGIBILITY, COMPRENSIBILITY, UTILITY

Food labelling is complex, and its complexity increases with the detail of information which is required, or demanded. **AFGC supports the fundamental maxim that label statements, and particularly mandated statements should be legible, comprehensible, and useful.**

Legibility is determined by a number of factors intrinsic to the label (font size, font type, colours), but there are also extrinsic factors such as the acuity of eyesight, ambient lighting and lighting colour. In addition to this there may be mandatory labelling requirements making the presentation of information in a clear manner difficult. **For example a long ingredients and additives list (mandated) on a small package (but still above the threshold for regulatory exemption) necessarily forces the use of smaller fonts.** Notwithstanding this, the onus remains firmly with food manufacturers to ensure their labels are legible, and the non-prescriptive approach currently within the Food Standards Code is appropriate.

Similarly, comprehensibility of labels depends not only on the clarity of information presented, but the capability of the consumer to understand presented information. There has been a debate on the use of numerical codes identifying food additives, with the food industry coming into criticism that it uses the codes to 'hide' additive information from consumers.

The reason for using additive codes is provided on the FSANZ website<sup>9</sup>

*'Many food additives have long complex names. Sometimes these are abbreviated, sometimes not. Some have more than one name and a few include letters from the Greek alphabet! The food additives list can be confusing so, to help reduce this confusion, each food additive is given a short code number.'*

---

<sup>9</sup> <http://www.foodstandards.gov.au/consumerinformation/additives.cfm>

## SUBMISSION

Moreover there is information available on the FSANZ website about the codes viz:

<i>'Thickener</i>	<i>(1422)- acetylated distarch adipate</i>
<i>Acidity regulator</i>	<i>(270)- lactic acid</i>
<i>Acidity regulator</i>	<i>(260)- acetic acid, glacial</i>
<i>Thickener</i>	<i>(415)- xanthan gum'</i>

To the average consumer '1422' is no less and no more comprehensible than '*acetylated distarch adipate*', but clearly the former occupies less label space. For consumers who want to know more, and comprehend more, information is available from websites and company call centres.

This raises issues of utility – if '1422' is of little value unless consumers invest time in seeking further information, and the same would apply for the chemical name, it would suggest such labelling generally is of little utility to consumers. AFGC is not making the case for removal of the requirement to list food additives on food labels, but a labelling policy which advises that the utility of food labelling information should be considered prior to introducing mandatory provisions would be useful.

Utility can be improved through market support of labelling systems. **For example the AFGC Daily Intake Guide (DIG) labelling (Appendix 2) has been well received by consumers because of promotional activity explaining the system.** This has included magazine advertisements, community service announcements on television and a website<sup>10</sup>.

Introduction of mandatory labelling requirements requires a similar 'in market' effort by Government, but this is rarely provided for, if at all.

### Recommendation

**That the Review note that the legibility, comprehensibility and utility of food labelling is dependent upon consumer capabilities which can be assisted by appropriate 'in market' support from Government in the case of mandatory provisions, and industry in the case of industry codes.**

## 4.2. LEGAL / TECHNICAL CONFLICTS IN LABEL CLAIMS

The comprehensibility and therefore the utility of label claims depends on using words commonly found in everyday language. There are examples, however, of regulatory prohibitions limiting the use of words to the detriment of consumers.

Until relatively recently the food industry was allowed to use the term "free" as in "gluten free", "lactose free", "sugar free". And from a physiological, biochemical, or nutritional point of view the products were essentially free from these components (the "sugar free" claim was permitted under the Code of Practice for Nutrient Claims at levels below 0.2%). That is, their trace presence had no health implications or food functions at all.

The ACCC, however, has ruled that "free" is an absolute term, and cannot be used if there are detectable amounts of the material present. With modern instrumental analysis most food materials can be detected to very low levels. Moreover, even if the food material is not

<sup>10</sup> [www.mydailyintake.com.au](http://www.mydailyintake.com.au)

## SUBMISSION

detected, this cannot guarantee total absence – in fact in most cases it is known that the material will be present in very small amounts. ACCC reached this conclusion through extrapolation of a court finding on “free” in relation to price, not content!

Thus claims such as ‘gluten free’ and ‘lactose free’ are simply not permitted although such claims are the simplest and most useful claims for helping consumers who are intolerant to gluten and/or lactose chose these products. The *Codex Alimentarius* standard allows a ‘gluten free’ claim when gluten is less than 50mg/kg<sup>11</sup> – which is below the level of health significance for Coeliac disease sufferers.

The ACCC ruling in this case highlights a number of key issues which a food labelling regulatory policy would resolve:

- 1) Clear demarcation of food as a consumed product rather than a consumer product would have provided guidance as to whether ACCC should have taken acted to prohibit use of the word “free” when applied to content (draft Principle 3, Section 3.1.1);
- 2) Protection of public health and safety related to label claims such as ‘gluten free’ is best left to public health agencies with appropriately technically competent and qualified staff – such as FSANZ, rather than to the law department of a consumer protection agency. A ruling on the primacy of which legislation should take precedent is required (draft Principle 4, Section 3.1.1); and
- 3) ACCC first applied misinterpretation of the term ‘free’ used on food labels in response to the gene technology labelling debate. Use of the word ‘free’ can be absolute when describing whether a particular technology has been used – the technology either was used somewhere in the food production and manufacture, or it was not. This highlights the divide between labelling for the nature of product vs labelling for production, processes and methods.

The illogicality of the ACCC deliberation on the word ‘free’ is further illustrated if other quantitative information is provided. Consider a food product:

- nutrient content data in the Nutrition Information Panel (NIP) are represent as precise numbers (e.g. Protein 12.4g);
- product weight is provided (e.g. net wt 250g); and
- it carries a nutrient content claims (e.g. ‘97% fat free’).

These are absolute claims but they are not absolutely accurate – the protein is not precisely 12.4g, the weight of the product is not precisely 250g, and it is not precisely 97% non-fat. The Food Standard Code and Weights and Measures legislation recognise variability and the non-precise nature of quantitative descriptors in food labels. Consequently these claims are not considered misleading to the consumer.

### Recommendation

**That the Review support the regulation of labelling of food products for technical issues being the remit of appropriate technically resourced regulatory agencies to optimise the benefit to, and protection of, consumers.**

---

<sup>11</sup> *Codex Alimentarius*

## SUBMISSION

### 4.3. POTENTIAL UNINTENDED CONSEQUENCES

AFGC supports the principle of providing consumers with as much access to information as they need to make an informed choice. In most cases that information will be provided voluntarily by food companies.

AFGC is, however, concerned that in some cases inappropriate choices may result from providing information. For example, there have been calls for environmental labelling. **AFGC considers however that first and foremost consumers should be encouraged to make food choices based on their nutritional needs**, not on environmental concerns.

There is evidence that substantial sections of the community, including children, have a compromised nutritional status, including marginal if not actual micronutrient deficiencies<sup>12</sup>. Proposals for mandatory labelling must include consideration of the impact on food choices of particular population groups to ensure there is a low likelihood of diets being skewed in a way which may lead to, or exacerbate, poor nutrition.

An example of negative 'unintended consequences' of labelling is the use of standard drink labels by young people to determine which alcoholic drinks provide the most alcohol/dollar. A recent study<sup>13</sup> reported that young people were aware of standard drink labels but used them

*'...predominantly to help them choose the strongest drinks for the lowest cost.'*

**AFGC supports standard drink labelling and uses this example solely to make the point that there are potential unintended consequences to labelling which must be guarded against.**

AFGC is concerned that extensive labelling around other issues such as carbon footprint labelling may have negative consequences, particularly for the more impressionable sections of the community, such as the young. **Young women, as a population sub-group, should not be eating less red meat for environmental reasons (i.e. carbon food print concerns) as they are already at risk of iron deficiency.**

**Similarly, pregnant women should not be advised to eat only one meal of fish per week based on sustainability of wild capture of fish stocks, when their growing foetus would benefit greatly from an omega-3 rich maternal diet.**

A corollary to these concerns is that labelling of food products, particularly mandatory labelling needs to be assessed for potential unintended consequences.

#### Recommendation.

**That the Review recognise that mandatory labelling measures may come with unintended consequences.**

<sup>12</sup> National Children's Nutrition and Physical Activity Survey. Commonwealth of Australia. 2007.

<sup>13</sup> Jones, S.C.; and Parry, G. *The impact of more visible standard drink labelling on youth alcohol consumption: Helping young people drink (ir)responsibly?*. Drug and Alcohol Review 28, 230-234 (2009).

SUBMISSION

#### 4.4. HEALTH PROTECTION VS HEALTH PROMOTION VIA FOOD LABELS

The issue of whether food regulations or food labelling regulations should be used in health promotion is perennial, and the failure to find a clear resolution suggests the issue is not straight forward, and indeed it is not. The aetiologies of diet-related diseases are multi-factorial. Lifestyle, environmental and genetic factors all play a substantial role. Moreover it is certain that these factors interact. **The corollary is that:**

- 1) **the contribution of diet as a causal agent to any disease is difficult to estimate;**
- 2) **the contribution of an individual nutrient within that diet as a causal agent to any disease is even more difficult estimate; and**
- 3) **the contribution of food labelling (or a lack of it) as a driver of food choice and so a causal agent of disease or poor health outcomes is practically impossible to estimate.**

The National Preventative Health Taskforce<sup>14</sup> after reviewing all the literature on obesity was unable to identify a body of scientific research which demonstrated food labelling (or possible current shortcomings) has a substantial impact on obesity.

Scientifically based estimates of the benefits of any particular labelling regime in effectively promoting good health have not been forthcoming. Thus strong justification for such labelling proposals to be mandated does not exist – the proposals simply have not met COAG principles for policy and law setting, and are unlikely to do so for the foreseeable future.

Notwithstanding this AFGC considers food labelling can assist in health promotion and indeed many food companies use not only food labels but other consumer information material about healthy diets and lifestyle to promote good health. These labelling approaches fit within the broader framework of nutritional and lifestyle consumer education efforts both complementing and reinforcing healthy eating advice. **They are not stand alone programs claiming to be the panacea to specific, or general diet, and health challenges.** Examples of labelling which assist health promotion include:

- AFGC's DIG Labelling scheme (Section 7.1) which helps consumers meet their individual dietary needs;
- the National Heart Foundation's 'Tick' labelling program;
- the successful use of nutrient content claims in Australia which in many cases are not directly regulated; and
- scientifically substantiated health messages on food packages which are currently prohibited in Australia but permitted in many other countries (Section 7.2).

#### Recommendation

**That the Review agree that no firm science-based case has been made for mandatory food labelling for health promotion, and support food product labelling under industry codes and schemes such as the National Heart Foundation 'Tick' as valuable programs working in concert with other measures to promote good health.**

---

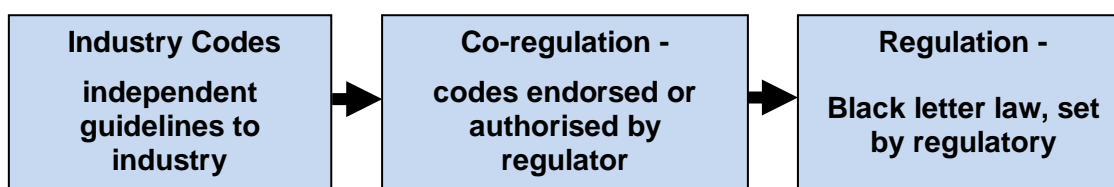
<sup>14</sup> Australia: The Healthiest Country by 2020. National Preventative Health Strategy – the roadmap for action. Commonwealth of Australia. 2002.

SUBMISSION

## 5. INDUSTRY CODES AS REGULATORY MEASURE

Regulatory measures range across a spectrum from industry codes with no legal compulsion on industry members to comply, through to full black-letter law where compliance is mandatory. There are intermediate co-regulatory options which may be supported by enforcement agencies and/or legislation.

Figure 1 - Forms of regulation



Self or co-regulation is the imposition by an industry upon itself of a code of practice, conduct or guidelines prescribing additional business performance standards beyond black-letter law for the industry in particular areas. Such codes are also referred to as *quasi-regulation*, particularly if they are supported by legislation.

The ACCC considers<sup>15</sup> that self regulation can provide a cost-effective means of addressing market failure in an industry basis through:

- being flexible and sensitive to market circumstances;
- providing ownership to industry members over the regulation of their industry;
- setting benchmarks for best practice in the industry; and
- including rapid dispute resolution mechanisms to resolve issues between industry members or raised by members of the public.

**ACCC also considers that the advantage of industry codes is they can set the performance benchmarks higher than can be achieved through black letter law.**<sup>15</sup>

For industry codes to be successful they must address a number of issues *viz*:

1. **Address market failure.** Codes must describe clearly the reasons (i.e. the market failure) for their establishment and the intended outcomes to effectively address stakeholder concerns.
2. **Consultation.** If codes are to be accepted by governments and have credibility with stakeholders, consultation with the appropriate stakeholder/community/user groups is vital.
3. **Clarity.** For all stakeholders to accept a code, it must be legally accurate and easy to understand.
4. **Code administration.** A code administration body needs to be established and its existence and operations written into the code document so that it becomes part of the overall code.

---

<sup>15</sup> G.Samuels. ACCC. Centre for Public Affairs 2003 Oration. Nov. 2003

## SUBMISSION

5. **Transparency.** Codes aimed at delivering fair trading outcomes need stakeholder representation on an administration committee including in complaints handling.
6. **Coverage.** The effectiveness of codes depends on coverage of the industry.
7. **Effective complaints handling.** The code should include mechanisms to resolve complaints including through independent arbitration and independent review.
8. **In-house compliance.** Each member should be able to demonstrate how they ensure compliance with the code.
9. **Sanctions for non-compliance.** For the credibility of a code commercially significant sanctions are necessary.
10. **Communication.** Codes are of real benefit when all members and stakeholders are made aware of them.
11. **Reporting and monitoring.** Data collection is important for reporting compliance and non-compliance and to identify recurring problems which need addressing by industry members. It also provides accountability through allowing for periodic assessment of effectiveness.
12. **Review.** The code should provide for regular reviews to ensure that the standards incorporated are meeting identified objectives and performance indicators.

Successful codes must be well designed, effectively implemented and properly enforced. Strong industry associations provide required leadership through initially identifying and describing the market failure and consulting all interested stakeholders, and subsequently providing the resources for developing the details of the code and financing its administration.

The credibility of a regulatory measure (i.e. a code) depends on a high level of compliance which, in turn, is dependent upon:

- a high level of awareness and understanding of the requirements of the code;
- acceptance by those regulated of the value of the market failure being addressed by the Code; and
- effective enforcement and monitoring of compliance and meaningful sanctions for non-compliance.

The latter is particularly important when inducements for non-compliance with the code are substantial i.e. when non-compliance might provide a business with a market advantage.

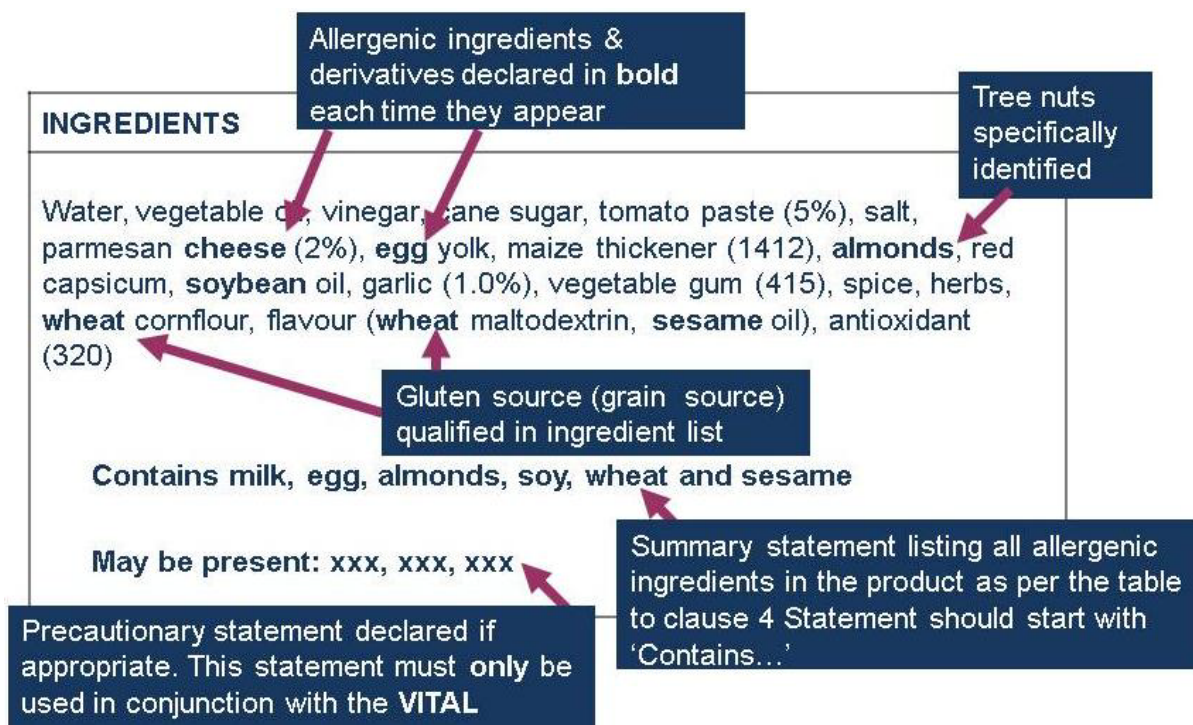
The key elements of successful enforcement of a code therefore comprise:

- clear communication of the reasons for the code and its requirements to all stakeholders;
- regular monitoring and reporting of the compliance;
- timely, independent complaint resolution processes (including appeal processes); and
- meaningful sanctions providing a strong disincentive to transgressing the code.

AFGC has developed and supports a number of industry codes such as the DIG front-of-pack labelling scheme (Section 7.1) and the AFGC Allergen Guide. Both have been developed to complement mandatory labelling requirements by providing consumers ready access to information. They have been successfully adopted by industry and represent examples of the successful 'regulating' of the market by industry itself. Indeed, the DIG labelling scheme has also been adopted by quick service restaurant chains.

SUBMISSION

**Figure 2. Advice on how to indicate the presence of specified allergens in the ingredient list of food products according to the AFGC Allergen Guide.**



**Recommendation**

**That the Review note the success of industry codes such as the Daily Intake Guide and Allergen Guide labelling schemes currently being used by the food industry in Australia and NZ.**

**5.1. DETERMINING THE APPROPRIATE REGULATORY MEASURE**

AFGC considers there are defined steps which must be taken prior to the introduction of a regulatory measure, particularly when the matter is instigated by government viz.:

- identifying the issue to be addressed,
- determining that regulation is the best approach
- ensuring consistency with relevant policies.

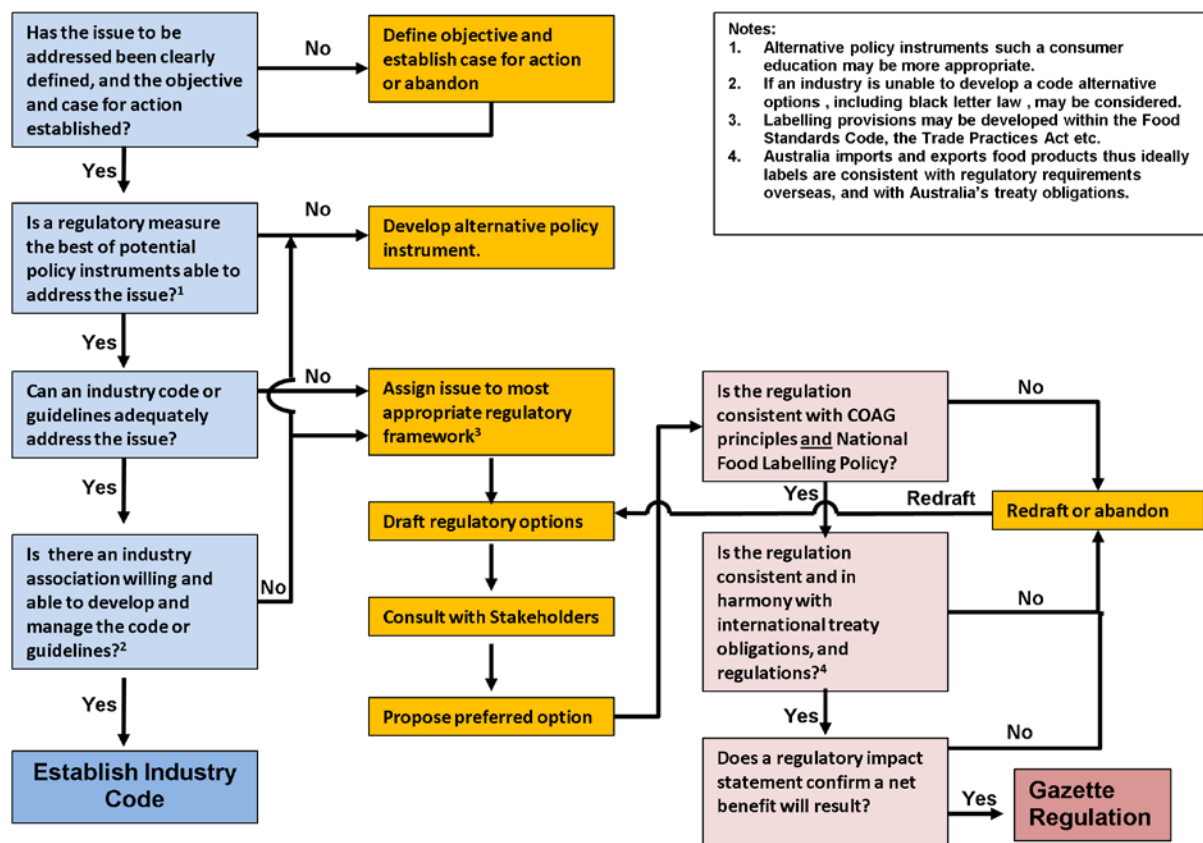
This approach is illustrated in Figure 3.

This framework provides the rationale for regulatory decisions, both to impose regulations and to reject proposals for regulations. Its adoption or a similar approach will moderate the expectations of all stakeholders thereby lessening the likelihood of labelling issues becoming highly contentious.



SUBMISSION

Figure 3. Assessment process for food labelling regulatory measures.



## 6. NATIONAL UNIFORM ENFORCEMENT OF FOOD STANDARDS

**National uniform enforcement of food labelling standards does not occur in Australia.** Moreover there is no mechanism for food companies to obtain advice from regulators at either national or jurisdiction level on labelling requirements in the Food Standards Code, or state and territory food regulations.

With eight jurisdictions responsible for enforcement, each able to interpret food standards in a different manner, there is potential for conflicting interpretation, and it does occur. This imposes unnecessary costs on industry attempting to determine the least risky labelling options, and is unfair on consumers as regional food companies may provide regional labelling solutions to their product.

**Ideally food labelling regulations would be interpreted and enforced in a uniform and consistent manner nationally, and in New Zealand when it comes to the Food Standards Code.**

## SUBMISSION

This requires a central point of authority which can:

- 1) provide interpretative advice to food companies and enforcement agencies – these would become ‘rulings’ as to the requirements of labelling standards;
- 2) maintain a public register of ‘rulings’ which can guide food companies and enforcement agencies and become a reference to assist subsequent issues of interpretation; and
- 3) be a mechanism to resolve disputes – that is if a food company and jurisdiction are in disagreement as to the interpretation of a food standard, then a ‘ruling’ can be given.

AFGC has considered in depth possible changes to institutional arrangements which could be introduced to allow a national enforcement approach. This could also be applied to food composition standards. Details are provided in the following sections.

### 6.1. STANDARD SETTING AND ENFORCEMENT ARRANGEMENTS

The food regulation system is a cooperative bi-national arrangement involving the Commonwealth, States and Territories and New Zealand. The Australian Government has no explicit constitutional power to regulate food produced or sold in Australia, although it does have responsibility over imported and exported foods. The regulation of food sold in Australia is the responsibility of State and Territory governments, which in some jurisdictions are delegated local councils. The development of a nationally consistent approach to food standards and their enforcement is dependent on the Inter-Governmental Agreement (IGA) on Food Regulation between States, Territories and the Commonwealth.

By authority of the Food Standards Australia New Zealand (1991) Act, the Commonwealth statutory authority, FSANZ develops, amends and reviews the Food Standards Code. Any amendments or additions to the Food Standards Code must be approved by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC). A policy framework for standards setting, which must also be approved by ANZFRMC, is provided by the Food Regulation Standing Committee (FRSC). The Food Standards Code is adopted by reference into New Zealand, State and Territory food regulations in accordance with the IGA.

The Food Standards Code applies to all foods sold in Australia and New Zealand (although New Zealand can choose not to adopt specific amendments to the FSC), including imported food. In Australia, the Australian Quarantine Inspection Service (AQIS) has responsibility for ensuring imported food complies with the FSC through the imported food inspection program.

The Food Standards Code operates in conjunction with the provisions adopted in each jurisdiction from the Model Food Act. The core provisions of the Model Food Act are required to be adopted without amendment under the IGA. Additional requirements under these Acts include, amongst others, provisions concerning the nature and substance of a food, the false description of a food, defence for due diligence, and the emergency powers provided to a jurisdiction to order a food to be recalled.

## SUBMISSION

### 6.2. SCOPE AND ENFORCEMENT OF FOOD STANDARDS

Food standards are developed and enforced in three broad areas:

- food production and processing – primary industry standards and the food safety standards mandate requirements to ensure food is safe and suitable for consumption;
- food composition – requirements for levels of ingredients, nutrients, additives and processing aids, allergens, endogenous toxins, contaminants and novel foods; and
- food labelling – information on food composition and nutritional properties, origin and safe use.

The enforcement of national regulatory requirements by Commonwealth, State and Territory jurisdictions should be undertaken with regard to the following principles:

- a graduated and proportionate approach;
- provide a range of enforcement tools for use under appropriate circumstances;
- procedures should be procedurally fair and transparent;
- based on nationally consistent interpretation of regulatory requirements;
- promote consistency of enforcement response between food regulators; and
- provide appropriate resources to assure a 'level playing field' in order to both facilitate trade and secure consumer's interests.

#### 6.2.1. Food Production and Processing

Enforcement of food production and processing standards requires local inspection and audit of production systems and premises, and systematic sampling and testing of products for sale. These are resource intensive activities some of which can be carried out by industry itself, through the use of independent, accredited third party audit. Minimising costs and reducing duplication of activities can be achieved where Government accepts third party audits. Audit frequency based on risk assessment and reduced frequencies for companies which perform well can further reduce costs for industry and allow government resources to be focused on areas of greatest public health risk.

Government also has a role, particularly in production and systems surveillance and monitoring. This requires local offices and officers with local knowledge of the agricultural and food industries. Consequently, for optimal effectiveness, this area of standards enforcement is best carried out locally through direct interaction with business at site or premises level.

#### 6.2.2. Food composition and Food labelling

Enforcement of food composition and food labelling standard requires:

- coordination of enforcement policies and activities with other agencies such as the ACCC;
- provision of formal compliance advice to industry generally, or individual companies, to support the intent of the Food Standards Code in the event of ambiguity in interpretation;

## SUBMISSION

- product monitoring and surveillance of compliance with composition and labelling standards; and
- oversight of industry codes of practice which might provide further regulation of the market in composition or labelling areas and product promotion.

Food composition and labelling requirements are applicable nationally – there are no unique regional requirements. Therefore, their provisions and enforcement should be uniform in all regions. Uniform enforcement would be best achieved by a central food standards enforcement agency. Enforcement of food composition and labelling should therefore become a Commonwealth responsibility residing in the government department with primary responsibility for food standards implementation.

### 6.3. A NEW ARRANGEMENTS FOR ENFORCEMENT OF FOOD LABELLING

In an ideal arrangement, the enforcement of food labelling requirements would be undertaken at a national level, providing a single point of contact for consumers and industry and ensuring a nationally consistent approach in the interpretation of requirements and the enforcement approach for all elements present on a label, irrespective of the agency under which regulatory requirements fall. Such a national entity would evaluate compliance with the Food Standards Code and Model Food Act, ensuring that consumers are protected from false, misleading or deceptive labelling and that the information provided is truthful, accurate and sufficient to enable an informed choice.

However, there are limitations as to what can be achieved in the current regulatory environment since the Commonwealth does not have the constitutional power to enforce the labelling requirements for foods sold in Australia.

In considering recommendations for approaches that may be adopted to compliance and enforcement of labelling requirements, an option would be to develop a single national enforcement agency, with enforcement powers applied from the Trade Practices Act (TPA) rather than to seek to have jurisdictions cede powers under their health and food Acts. It may be argued that failure to comply with requirements of the Food Standards Code are deemed to be a label that is false, misleading or deceptive, and that the under the TPA the Commonwealth could enforce these and other requirements present on food labels.

While it might be possible for the States to cede power, or for the Commonwealth to undertake enforcement through Trade Practices legislation, a more pragmatic solution would be to develop an approach to national assessment for compliance with the support and collaboration of jurisdictions using a two-step approach.

A graduation of enforcement approach needs to consist of elements which provide an opportunity to ‘advise and persuade’ leading up to ‘significant deterrence’:

- Persuasion & education
- Negotiation and settlement
- Letters of warning
- Notices of non-compliance
- Pecuniary criminal penalties
- Incapacitative criminal penalties

## SUBMISSION

While recognising that a national entity responsible for the assessment of compliance with labelling requirements may not have the legal capacity to implement criminal proceedings against a company, nevertheless with the agreement of the jurisdictions, such a national entity would still be capable of implementing at least the first three dot points above.

Such arrangements could be developed through the Implementation Sub-Committee (ISC), which works as a collaborative multi-jurisdictional committee for the implementation of food standards, and which include representation from FSANZ. This is recognised by the ISC in the guideline document Australian & New Zealand Food Regulation Enforcement Guideline 2009, although under the ISC guide jurisdictions remain solely responsible for enforcement with no mechanism to ensure a nationally consistent approach, and limited by the resources and capacity of the jurisdiction to prioritise and fund such activities. The ISC guide broadly applies to the enforcement of the Food Standards Code as a whole, and particularly the enforcement of food safety requirements. There is little emphasis on the enforcement of food labelling requirements and the assessment of risks associated with incorrect or inaccurate labels.

An alternative to the current ISC approach is to consider a two-step approach incorporating a centralised national enforcement component. Such a mechanism could work by utilising a small complaints panel or labelling arbiter tasked with the responsibility to review labelling complaints and undertake surveillance activity. Where non-compliance is identified, the first three elements of the graduated enforcement action could be applied by a national enforcement entity without compromising the ability of jurisdictions to subsequently implement punitive action if necessary. In circumstances where a business fails to act in good faith to resolve the labelling problem the matter could then be referred to ISC and the responsible jurisdiction to undertake legal proceedings.

In developing such an option, it would be necessary to enter into Memoranda of Understanding with jurisdictions that all prosecutions will be undertaken by jurisdictions on the recommendation of the national compliance and enforcement entity, with the appropriate officers from the national entity available to be called as expert witness for the prosecution.

New arrangements providing for national enforcement of food composition and labelling standards are proposed (see Figure 4). Much of the current arrangements (e.g. ANZMRC, FRSC, ISC, FSANZ) are retained.

### Recommendation

**That the Review recognise the importance to business of certainty in interpretation and enforcement of food standards and support this issue being addressed urgently through development of a mechanism providing national uniform advice for compliance with food labelling standards.**

Figure 4 (a) Current arrangements of the food regulatory systems

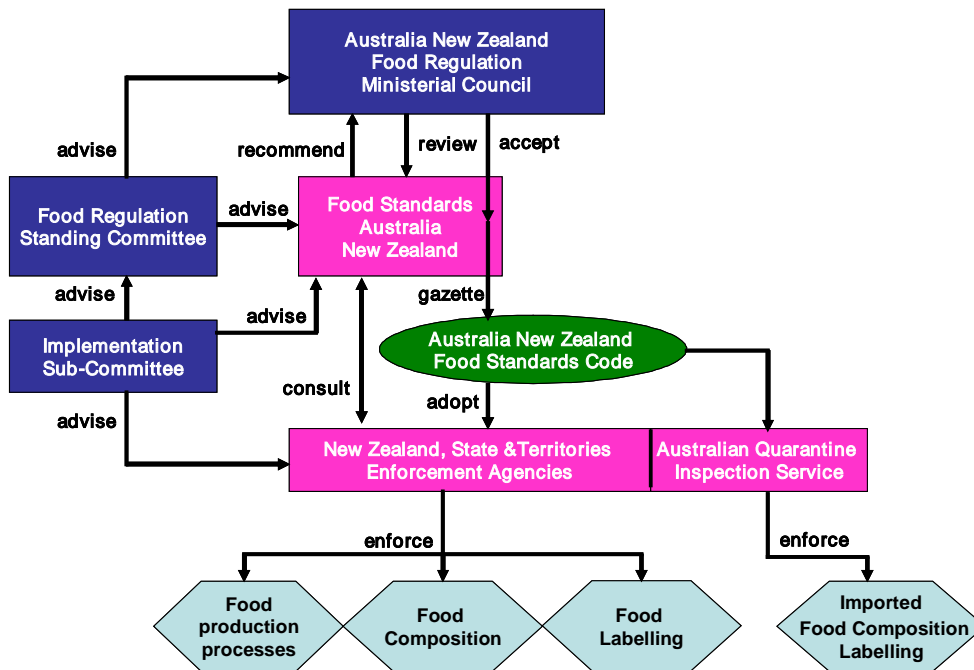
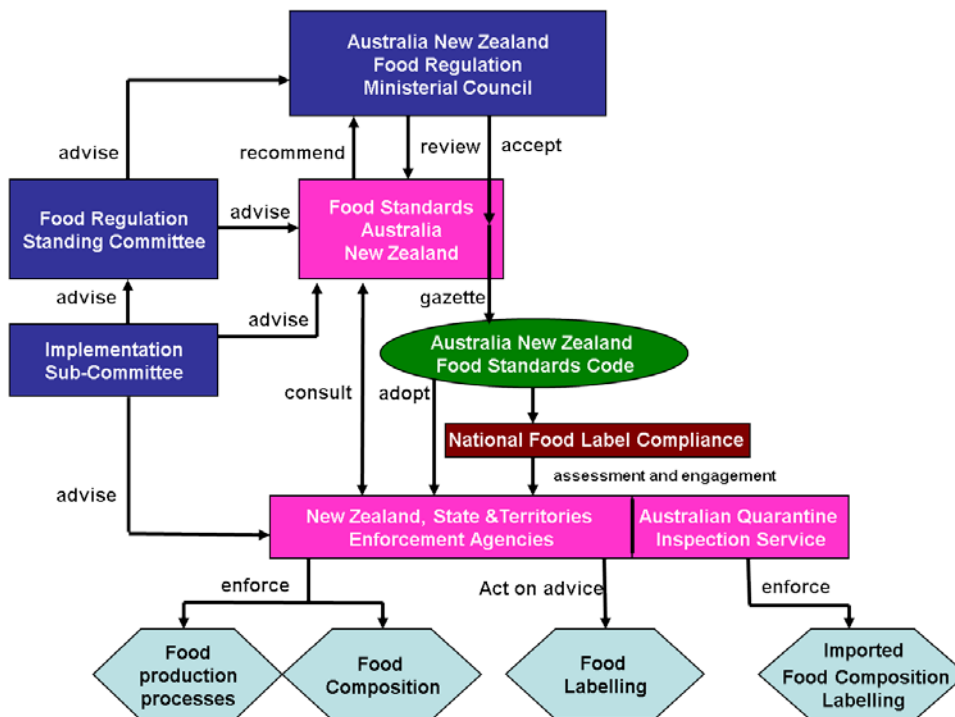


Figure 4 (b) Possible alternative arrangements to provide for uniform enforcement.



## SUBMISSION

### 7. AFGC POLICY POSITIONS ON KEY LABELLING ISSUES.

#### 7.1. FRONT OF PACK LABELLING

AFGC has long advocated for clear policy guidelines on food labelling, including front of pack labelling (FOPL). Indeed AFGC has argued the need for a policy which aligns regulation with well established FOPL schemes, such as the 'Heart Tick' and the AFGC DIG (DIG) labelling scheme.

AFGC supports policies and regulations which are evidence-based addressing well defined issues with clear objectives. Whilst there is agreement on the need to provide consumers with information there is no clear evidence regarding on how effective FOPL is, or might be, in achieving this aim, despite numerous studies reviewing different forms of FOPL.

**Consequently AFGC considers a non-prescriptive FOPL Policy Guideline is the best approach.**

For providing general information about food which is applicable across the healthy adult population AFGC considers non-interpretative approaches – such as the DIG scheme - are better than interpretive approaches such as “traffic lights”. This reflects the nutritional wisdom that all foods can be incorporated into healthy diets and the maxim of moderation, balance and variety – and importantly underscores that all foods do contribute to diets.

More over, the DIG scheme goes beyond labels of food packages. The scheme supports consumers understand the labelling and how to use it through:

- guidance on the intent of the program and format of label icons (thumbnails) giving a common look to the scheme and confidence in the information to consumers;
- active enforcement through market surveillance;
- promotion to industry to ensure its widespread use; and
- education of consumers regarding use of the labels through:
  - community service announcements encouraging use of the thumbnails;
  - point of sale education material (in preparation) providing detailed information on how the thumbnails should be used; and
  - web support to assist consumer determine their nutritional needs and further information on constructing healthy diets.

Consumer research in 2008<sup>16</sup> confirmed awareness of the DIG scheme is high and being transferred into purchasing decisions. More recently studies reported in the Journal of Public Health have confirmed that consumer understanding of Guideline Daily Amount labels (which are similar to the DIG scheme) was high in European countries.<sup>17</sup>

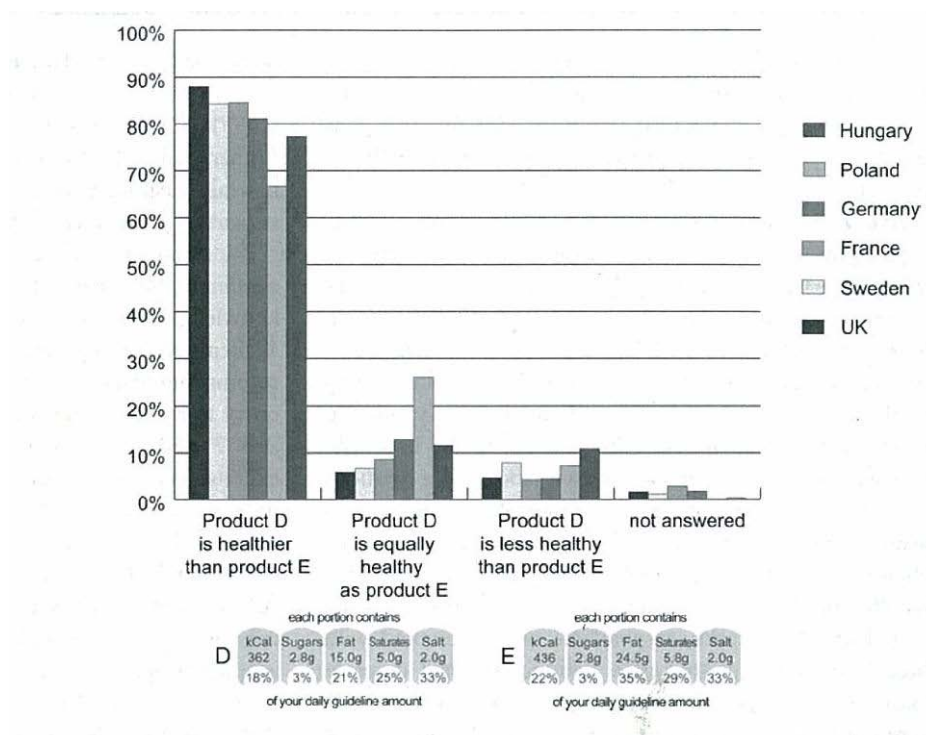
---

<sup>16</sup> AFGC Consumer Research. Newspan. 2008.

<sup>17</sup> Grunert, KG, Fernandez-Celemin, L, Wills, JM, Storcksdieck genannt Bossmann, S, Nureeva, L. J.. *Use and understanding of nutrition information on food labels in six European Countries*. Public Health DOI 110.1007/s10389-009-0307-07 (Jan 2010).

SUBMISSION

**Figure 4. Evaluation of healthiness based on two labels (% of respondents returning the home questionnaire in each country).<sup>17)</sup>**



In contrast AFGC considers interpretive schemes such as ‘traffic lights’ ill-suited to helping consumers construct health diets as they:

- fail to reflect the nutritional wisdom of the importance of variety, balance and moderation;
- risk the health of consumers by
  - implying that ‘green’ foods can be consumed without restraint; and
  - dismissing the importance of nutrient density, and particularly of micronutrients despite evidence that many Australians have suboptimal intakes.
- unscientifically focus on individual foods, rather than the need to construct healthy diets;
- simplistically approach a complex problem, doing nothing to encourage consumers to eat to their requirements;
- create hard boundaries, based on nutrient content, suggesting that very small changes can profoundly effect on the nutritional value of a product – which is not scientific;
- are usually based on nutrient content/100g which ignores usual consumer behaviour of choosing smaller serve sizes for nutrient dense products such as confectionary, and for which smaller serve sizes are recommended;
- are ineffective for some cultural groups less familiar with symbols such as traffic lights; and
- **fail to distinguish between some foods e.g. margarine and butter** (Appendix 2).



## SUBMISSION

Interpretive labelling schemes such as ‘traffic lights’ promulgate the falsehood that some foods are inherently ‘healthy’ and some are ‘unhealthy’. This is unscientific and a poor basis for food policy or regulation; nutritional wisdom only recognises ‘healthy’ and ‘unhealthy’ diets.

Research in Europe has confirmed this view concluding:

*“Colour coded schemes such as traffic lights also met with high levels of awareness but were open to some misinterpretation as people tended to exaggerate the meaning of the colour-coded levels, with 73% of shoppers in the UK believing that a ‘red’ light indicated they should avoid eating a product”<sup>18,19</sup>.*

Indeed the UK Food Standard Agency – one of original proponents of ‘traffic lights’ – has now supported the use of a DIG approach, albeit with elements of traffic lights included<sup>20</sup>

In Australia the AFGC DIG scheme has been well received with over 2000 products from more than 70 companies now carrying the DIG ‘thumbnail’ icons. **AFGC continues to support the DIG scheme and following its initial success is in the process of transforming it into a full industry code** (Section 5).

### Recommendation

**That the Review note the success of the AFGC Daily Intake Guide labelling scheme both in terms of its extensive uptake by industry, and as an example of an effective voluntary code and regulatory measure managed by industry.**

## 7.2. HEALTH CLAIMS

AFGC has long advocated a relaxation of the current prohibition on health claims allowing food companies to tell consumers how particular products may protect and promote good health in the context of a healthy diet and lifestyle.

As part of that AFGC has sought a co-regulatory framework providing guidance for industry to make claims about products which are:

- truthful, and scientifically substantiated;
- presented in the context of a healthy diet and lifestyle;
- moderate and responsible in their language to avoid misleading consumers; and
- do not promise or raise undue expectations regarding health outcomes.

---

<sup>18</sup> <http://www.eufic.org/page/en/fttid/EUFIC-study-sheds-light-on-consumer-understanding-of-labels-and-nutrition-as-the-food-labelling-proposal-is-debated/> ;

<sup>19</sup> <http://www.focusbiz.co.uk/webinars/eufic/paneuropeanlabelresearch/europe/video/05Nov08media.wmv>

<sup>20</sup> <http://www.food.gov.uk/news/newsarchive/2010/mar/fopagreement>

## SUBMISSION

AFGC considers the key elements of an effective health claims regulatory system comprise:

- a scientific, evidence-based approach to the substantiation, and approval, of health claims;
- simple, easy to understand, flexible provisions in the food regulations, with minimal levels of prescription, to optimise innovation in food products to assist consumers select diets which protect and promote good health;
- clear enforceability of provisions limiting only permitted health claims to the market place; and
- cost effectiveness to minimise the potential burden on industry and enforcement agencies.

**In essence, AFGC seeks a co-regulatory framework which facilitates rather than constrains the flow of truthful diet and nutritional advice to consumers through food labelling and advertising.**

The efforts of food regulators to date have fallen short of this rather modest target. FSANZ's last attempt to introduce a health claims standard<sup>21</sup> was rejected by the ANZFRMC on the grounds that the draft standard:

- was not consistent with Ministerial Council principles;
- did not protect public health and safety;
- was unreasonably costly for industry and consumer;
- was impractical to enforce; and
- was inconsistent with FSANZ legislation objectives

**FSANZ's failure to develop a sensible standard was due largely to a lack of an overarching food labelling regulatory policy setting some fundamental principles.** Certainly, there is a health claims policy document<sup>22</sup>, but this document is fundamentally flawed also (it is nine pages long, prescriptive and internally inconsistent).

**AFGC considers that an appropriate health claims regulatory regime which allows industry to make moderate, well-substantiated health claims on food packs will only come about under the guidance of an effective food labelling regulatory policy** which integrates some key issues such as the consideration of appropriate regulatory measures, the consumers right to know, and the fundamental justification for both mandating and prohibiting information on food packs.

### Recommendation

**That the Review note the potential value of a well-cast food labelling regulatory policy in resolving the seemingly intractable regulatory issues of an appropriate regulatory framework for health, nutrition and related claims.**

---

<sup>21</sup> Draft Standard 1.2.7 Nutrition, Health and related claims. FSANZ 2008.

<sup>22</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm#nutrition>

## SUBMISSION

### 7.3. TRANS-FAT LABELLING

The Food Standards Code<sup>23</sup> states:

*The nutrition information panel must include declarations of the trans, polyunsaturated and monounsaturated fatty acids in accordance with sub-clause (7), where a nutrition claim is made in respect of –Issue 109(R) 8 Standard 1.2.8*

*(a) cholesterol; or*

*(b) saturated, trans, polyunsaturated or monounsaturated fatty acids; or*

*(c) omega-3, omega-6 or omega-9 fatty acids.*

Thus foods which make truthful claims about the presence, or absence, or relative amounts of fat components must state the trans-fat levels.

Food industry has been removing trans-fats from the food supply in Australia since the early 1990s when nutritional science advances identified a link between trans-fat intake and cardiovascular disease risk. Dietary surveys have demonstrated the levels of trans-fat in the Australian diet at approximately 0.6% of energy intake is well below the World Health Organization recommendation that trans-fats be <1.0% of energy intake<sup>24</sup>.

**Thus there is no strong public health argument for extending the NIP to include trans-fats labelling – this would result in most foods recording a zero or trace amount which would in most cases add no value for consumers.**

Furthermore, in some foods trans-fats are relatively high, and labelling may cause reformulation of the products with higher levels of saturated fat – for example if used as shortening in baking. This would be contrary to public health policy which is seeking to reduce the level of saturated fat intake in the population.

#### Recommendation

**That the Review note that there is no strong public health argument to mandate trans-fat labelling beyond the current provisions of the Food Standards Code.**

### 7.4. SALT VS SODIUM

When mandatory NIPs were introduced with the new Food Standard Code there was a debate about whether salt levels or sodium levels should be mandated. FSANZ (or strictly its predecessor ANZFA<sup>25</sup>) determined that sodium was the preferred term as:

- many sources, not just sodium chloride (or common salt), contribute to dietary sodium which is linked to disease risk;
- salt is a generic term and consumers may be misled as there may be a range of “salts” in food; and
- sodium, rather than salt, is more easily determined in food so enforceability of the regulation is more straight forward.

<sup>23</sup> Standard 1.2.8. Nutrition Information Requirements. [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

<sup>24</sup> [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

<sup>25</sup> Australia New Zealand Food Authority

## SUBMISSION

Notwithstanding all these factors consumer understanding of sodium is low, and dietary guidelines refer to salt more often than sodium. AFGC considers there is a case for revisiting this issue to determine if salt can replace sodium, or also be declared, on the NIP.

Arguments in support of this are that:

- for a great majority of foods most of the sodium comes from common salt;
- there would still be a good basis for comparison between foods with lower salt foods still readily identifiable; and
- consumers understand salt and appreciate that they should monitor and limit their intake.

To address enforceability issues one option would be to standardise “salt” content for labelling purposes in sodium chloride equivalents based on sodium content (i.e. use the sodium figure and multiply by 2.5).

### 7.5. FOOD ADVERTISING

If claims are permitted (either by the Food Standards Code, or industry codes) on food labels then the claim should be permitted in food advertising and they should be regulated by the same legislative measure. By the same token, claims which are not permitted on food labels (by the Food Standards Code, or industry code) should not be permitted in advertising.

The same principle extends to other claims which are legislated under different regulatory instruments – such as the TPA.

#### **Recommendation:**

**That the Review support the principle that legislative instruments regulating food labels extend also to food advertising, but retaining the demarcation between food as a consumed product from other considerations.**

### 7.6. DATE MARKING – FOOD SAFETY AND CONSUMER ADVICE

**AFGC considers the Food Standards Code has a role in regulating the labelling of foods to advise consumers when a food may become a safety concern or when it is likely to be of a lesser quality, but remains safe to eat.**

The Food Standards Code mandates that date marking be provided for foods with a shelf life of less than two years, either as a ‘use by’ or a ‘best before’ date, and where it is an offense to sell food which has exceeded the ‘use by’ date. In determining which form of date marking to use, consideration must also be given to the requirement of the Model Food Act concerning requirements for ‘unsafe’ and ‘unsuitable’ foods. Terms such as ‘expiry date’ are not permitted under the Code, although the term ‘Baked on’ is permitted for bread.

Industry identified concerns about the inappropriate use of date marking, mainly with products providing ‘use-by’ date coding on products that should be labelled with ‘best before’ dates, but also where there is confusion as to whether products with a ‘best before’ date should have a ‘use by’ date. This created problems for retailers who might inadvertently have shelf stock which had exceeded the ‘use by’ date, but which would not ordinarily be

## SUBMISSION

considered a safety risk. Yet simply by virtue of the fact that the 'use by' date is exceeded the product may not be sold and must be destroyed.

Concerns have been raised by consumers concerned about food waste and the potential for industry to unnecessarily apply use by dates, or to shorten dates in an attempt to have useable food discarded and thereby increase sales and stock turnover. Equally, concerns have been raised that poor temperature control of foods at both retail and in the home means that manufacturers must apply shorter dates to take into account the potential foods to spoil faster than might otherwise be the case if food was continuously stored at 5 °C.

AFGC recognised that, in addition to enforcement issues, inappropriate use of date marking undermines the industry credibility with consumers and retailers, creating confusion and concern about the safety of food on sale as well as concerns over quality and suitability.

It was established that the principle cause has been due to difficulties with inconsistent interpretation of the requirements of the Food Standards Code concerning date marking and the lack of effective guidelines. Deficiencies were identified in the FSANZ User Guide on Date Marking, particularly because the guide fails to take into account that perishable food which becomes 'unsuitable', but not unsafe, are not adequately covered in the guide.

AFGC established an industry working group with representation across a variety of manufacturing sectors and major retailers. The working group developed an voluntary industry guide to the application of 'use by' and 'best before' dates which was completed in September 2008 and has been endorsed by AFGC<sup>26</sup> and all major retailers, with copies of the guide provided to all enforcement agencies.

### 7.7. ALCOHOLIC BEVERAGES

**AFGC considers the Food Standards Code has a role in regulating the labelling of alcoholic beverages in matters relating to them as consumed products.**

In reality they are foods as they are consumed as beverages (which are classified as foods in the Food Standards Code); culturally they are considered to be and used as beverages, and similar to other beverages they contribute energy and nutrients to the daily diets of many consumers.

When the current Food Standards Code was developed, many prescriptive *standards of identity* of food products<sup>27</sup> were removed. This provided manufacturers with greater opportunities to introduce innovative new products. To ensure consumers had a good understanding of the nature of these products labelling requirements were extended – the NIP was made mandatory and percentage ingredient labelling was introduced.

Prescriptive standards of identity for beers, wines and spirits remain in the Food Standards Code<sup>28</sup>. Thus for these products there is less need for NIPs and ingredient list – consumers know wine is made from grapes.

**AFGC considers there is no demonstrated need for mandating either the NIP or the ingredient list for standardised alcoholic beverages.**

---

<sup>26</sup> [www.afgc.org.au](http://www.afgc.org.au)

<sup>27</sup> Standards of identity prescribed the composition of a large number of food products e.g. the amount of fruit in jam.

<sup>28</sup> Part 2.7 Alcoholic Beverages. Food Standards Code. FSANZ. [www.foodstandards.gov.au](http://www.foodstandards.gov.au)

## SUBMISSION

For non-standardised alcoholic beverages (i.e. alcoholic mixers, whisky creams) the issue is less clear cut and for these products extra labelling may be appropriate.

### 7.8. WARNING STATEMENTS ON FOOD LABELS

**AFGC considers the Food Standards Code has a role in regulating mandatory advisory statements, specifically for ingredients that may be potentially life threatening for particularly vulnerable consumers, and those who have no other means of discerning the risk posed by the food, in particular the presence of allergenic ingredients.**

AFGC also recognises that the Food Standards Code is silent on the use of precautionary labelling terms, such as *'May contain...'*, or *'Made on the same equipment which has also processed...'* and that consumer concerns have been raised as to whether such statements are more a reflection of companies taking a legalistic precautionary approach rather than assessing the actual risk that the allergen may be present at a level likely to cause harm.

The food industry recognised that both the statement of the actual presence of allergenic ingredients and the potential risk associated with potential for unintended traces of allergens to be present is both necessary and vital information for consumers with allergies. Sufferers of peanut allergies are particularly sensitive to the presence of trace levels of peanut proteins and may suffer an anaphylactic reaction caused by very low levels of peanut in a consumed product.

Full regulation cannot be used to regulate against accidental occurrences, or require *'May contain'* statements, but industry can work collectively to minimise the risk of accidental traces of allergens in food products.

Thus, AFGC has developed an industry 'best practice guide' to allergen management<sup>29</sup> and labelling of foods, which recommends a standardised manner of labelling foods to ensure consumers are able to more easily identify if allergens were present. The guide also introduces the concept of *'voluntary incidental trace allergen labelling (VITAL)'* which is a systemic approach to assessing the actual risk posed by incidental presence of allergens and how these should be consistently labelled.

**AFGC considers the industry agreed approach and best practice guide to allergen labelling is the most effective means of ensuring consumers are provided with meaningful information.**

It should be noted, that allergen labelling is a classic example of determining when a public health and safety issue becomes a significant enough to warrant food labelling. In fact, allergic reactions have been reported to a wider range of food types, but most are not severe. Those which are require labelling. Allergen sufferers may look to the ingredient list which can provide further protection.

---

<sup>29</sup> Available on the AFGC website. [www.afgc.org.au](http://www.afgc.org.au).

SUBMISSION

## 8. COUNTRY OF ORIGIN LABELLING

In the development of the Country of Origin Labelling Standard under proposal P292 in 2005, FSANZ examined extensively options for country of origin labelling and costs imposed on the food industry and borne by consumers.

As part of this assessment for country of origin labelling, FSANZ undertook an assessment of the feasibility of requiring origin declaration of major ingredients in foods. The Ministerial Council supported a recommendation to reject such a proposal on grounds of significant regulatory burden on industry and significant costs for enforcement with no discernable benefit to consumers or Australian producers. The current requirements for country of origin labelling in the Food Standards Code are adopted from the requirements specified in the TPA, and the ACCC guidelines for the food industry on safe harbour.

Under these requirements, the terms “*Product of Australia*”, “*Made in Australia*”, and the qualified terms “*Made in Australia from local and imported ingredients*”, or “*Made in Australia from imported and local ingredients*”, or “*Packed in Australia*” are permitted.

These were developed to provide consumers with relevant information and at the same time recognise the practical limitations of implementing and embracing such a system.

The term “*Product of Australia*” requires that each significant ingredient or significant component of the product must be Australian, and all processes involved in the production or manufacture of the goods must have happened in Australia.

The term “*Made in Australia*” requires that the goods must have been substantially transformed in Australia and that 50 per cent or more of the costs of production must have been carried out in Australia.

Qualified declarations are recognised as meeting the requirements for country of origin labelling and do not require substantiation of substantial transformation and production costs defences. The term ‘*Made in Australia from local and imported ingredients*’ is a qualified claim which is recognised as sufficiently accurate, relevant and useful in declaring the majority ingredient content is of local origin, but also contains imported ingredients. Alternative qualifications are also recognised, such as ‘*Made in Australia from local and imported ingredients, subject to seasonal availability*’.

The assessment for determining whether a manufactured pre-packaged food qualifies for ‘*Product of Australia*’ or ‘*Made in Australia*’ requires an assessment of not just the origin of ingredients, but also the costs of production and the processes applied during manufacturing. Part of these costs is associated with packaging materials used in production.

It is estimated that about 90% of packaged foods use imported packaging and include at least one imported ingredients or food additive (yeast, cocoa, spices, specific oils etc). Some of these components are not available within Australia. Imposing more stringent requirements on the use of ‘*Product of*’ to differentiate from ‘*Made in*’, may mean that no processed manufactured food could qualify for the use of the term ‘*Product of Australia*’, even though the ingredients are entirely Australian grown.

Despite clear guidance on the use of the label claims, AFGC recognises that consumers may not understand the basis of the differences between the claims. Moreover food industry is under pressure to adhere the guidelines as they provide a legal safe harbour, even though

## SUBMISSION

for some products they may not be well suited. **Given the continuing controversy around the country of origin labelling it is apparent that the current arrangements do not serve the industry or the consumers well.**

### 8.1. Implications for Country of Origin Labelling and impacts on industry

Many ingredients are sourced from several suppliers, which the manufacturing and processing industry will use depending on seasonality, availability, supply flexibility and price of the ingredient. Australian sourced ingredients, such as milk, wheat or salt, may be available throughout the year, but crops such as fruits and vegetables are seasonal. In order to ensure a supply of processed product it may be necessary to import such commodities when out of season in Australia. Often the commodity is sourced from more than one country. The consumer is advised of this through the current declaration “*Made in Australia from local and imported ingredients*”.

Food security and ensuring reliable supply lines for ingredient is essential for a sustainable industry, particularly given risks from climate change, changing economics with the biofuel industry and the risk of disease outbreaks. For example, glucose used to be sourced locally but with the change in the dynamics of the market, there is a need to reduce the supply risk by having an additional supplier offshore. Sugar is also sourced locally but industry is likely to have an imported option as a contingency.

If industry needs to change supply source it needs to act relatively quickly as ingredient stocks are typically no more than 1 -2 weeks on hand. However, it can take 6 to 8 weeks for labels to be produced and delivered on site, although this can increase dramatically around seasonal peak periods such as Christmas, Easter, End of Financial Year and other sales promotion points.

Imposing higher thresholds and more onerous requirements for country of origin labelling will not only impose costs for assessment and for enforcement, it will significantly constrain manufacturing due to the impact of having change labels at short notice. Labels would need to be prepared and stocked in advance as there is a significant time lag in changing artworks and production plates, and getting artwork checked and printed. Maintaining the necessary flexibility of having alternative sources and suppliers would require manufacturers to carry additional inventories of product labels, just in case they needed to change suppliers.

Furthermore, having a variety of labels that are essentially the same, except for details of the country of origin, significantly increases the risk that product will be inadvertently labelled in error with further costs resulting from having to relabel product or having to recall the product.

### 8.2. Compliance and enforcement for Country of Origin Labelling

While there are reports that some consumers are confused over the terms ‘*Product of Australia*’ and ‘*Made in Australia*’, finding the terms to be essentially synonymous, the TPA in Australia and the Fair Trading Act in New Zealand have established rules for country of origin labelling based on internationally agreed requirements.

The Australian Government recognised the need to assist consumers in providing additional qualifying statements and have proposed that the TPA be amended to permit the term “*Grown in Australia*”. Again, while this may persuade some consumers about the quality of the ingredients, in isolation the term ‘*grown in*’ does not address the concerns raised about where the product is made. In theory, raw ingredients could be exported to another country



## SUBMISSION

for processing and re-imported into Australia, labelled as '*Grown in Australia*' but '*Made in*' another country.

New Zealand recognised the potential cost to industry particularly in relation to international trade, and has exercised its right under the Trans Tasman Treaty to opt out of the standard, delivering a competitive advantage to New Zealand manufacturers importing into Australia and creating an inequity for Australian manufacturers. In adopting the mandatory country of origin labelling requirements, **the ANZ Food Regulation Ministerial Council acknowledged that it was undertaken in order to provide consumers with information about the product and did not reflect safety concerns about imported products at all.** AQIS and Biosecurity Australia have the responsibility for assessing the safety and risks posed by exporting countries and ensuring that imported food complies with Australian requirements that it is safe.

The principle legislation relating to country of origin labelling falls under the TPA in Australia and is referenced in the Food Standards Code. The Food Standards Code is adopted by reference into State and Territory legislation. In regards to enforcement, this creates a dilemma in that State and Territory Acts, which are subordinate to Commonwealth legislation, are required to adopt by reference the provisions of the TPA.

Furthermore, the limited resources applied by state and territory jurisdictions in the enforcement of the Food Standards Code are generally prioritised in the protection of public health and safety, and since the provision of country of origin information is not considered a health matter it is of least priority for health agency enforcement.

Country of origin requirements are complex and consumers have concerns that the use of such terms may be false or misleading. Legislation under the TPA carries country of origins provisions and ACCC has expertise in enforcing.

**AFGC considers there is a strong argument for removing the country of origin labelling provisions from the Food Standards Code and giving sole responsibility to the ACCC (or to the New Zealand Commerce Commission).**

Country of origin labelling is, however, likely to remain a contentious issue. If sole responsibility for it goes to the ACCC there is a good case for food to be treated as a special case – i.e. reflecting issues such as seasonal availability. The objective would be to address some anomalies where the current labelling provisions are not well suited to meeting the information needs of consumers, and are potentially misleading.

### Recommendation

**That the Review consider alternative options for revising Country of Origin Labelling requirements viz:**

- 1) removing Country of Origin Labelling provisions from the Food Standards Code and giving sole responsibility to the ACCC with recommendations for food to be considered a special category in revised Country of Origin Labelling Guidelines;**
- 2) replacing the detailed and prescriptive mandatory Country of Origin Labelling provisions in the Food Standards Code, with a “simple” mandatory requirement that the origin of the product must be declared with recommendations for food to be considered a special category in revised Country of Origin Labelling Guidelines.**

SUBMISSION

## 9. NEW TECHNOLOGIES – GENE TECHNOLOGY, IRRADIATION, NANOTECHNOLOGY

The food industry has a history of introducing processing technologies which have made food safer, extended availability and reduced prices to consumers. Ancient technologies include salting and pickling. In the last 150 years refrigeration and freezing, canning and pasteurisation have been introduced. Modern technologies include irradiation, gene technology, high pressure processing, and most recently nanotechnology.

**AFGC supports the introduction of new technologies into the food industry within a regulatory framework which provides for specific safety assessments leading to regulatory approval and if necessary mandatory labelling requirements<sup>30</sup>.**

### 9.1. Gene technology labelling

**Gene technology labelling is not a food safety issue.**

All foods derived from gene technology must be approved by FSANZ following a safety assessment process, prior to market release. This means that all foods derived from gene technology for sale in Australia and New Zealand are (by any sensible meaning of the word) safe. Labelling these foods does not add to their safety. Moreover there is a substantial body of evidence to indicate that genetically modified (GM) foods are generally safe viz:

1. GM foods have been on the market for over 20 years, and there has not been a single case of ill health associated with the GM nature of the food product;
2. there have been numerous official studies commissioned around the world and none have identified any health risks associated uniquely with GM technologies to the extent that would warranted abandoning the technology, or require specific labelling;
3. regulatory agencies in the USA, Europe, Canada, Australia and other countries have been assessing GM foods for many years with no cases (to AFGC's knowledge) of approval being denied due to health issues; and
4. there is no plausible underlying biochemical theory which proposes a mechanism for how the act of modifying genetic material is inherently dangerous, and empirical evidence from hundreds of years of conventional breeding (which results in changes to genetic material) suggest strongly that it is not.

**AFGC recognises that GM food labelling remains a controversial issue, particularly among some elements of the community.** Consumer affairs data from food companies ([Appendix 3](#)) suggests that it is not as prominent an issue with consumers as it was some years ago, perhaps reflecting the lower media interest, or that consumers are becoming more comfortable with the concept of GM foods.

---

<sup>30</sup> If use of new technology results in a changed, or novel food, then consumers may need to be informed about it to ensure its safe use, and appropriate incorporation into healthy diets.

## SUBMISSION

**AFGC considers the current GM food labelling requirements are supportable and that there is not a strong case for amendment** – either to relax them, or to tighten them. They meet the needs of consumers by requiring the labelling of foods which:

- are substantially altered through the use of GM technologies; or
- which contain modified DNA or protein from their components, or above trace amounts due to co-mingling through the supply chain.

Highly refined food ingredients or additives do not need to be labelled. If they did attract a label, their ubiquitous use would result in almost all foods being GM labelled, even in the absence of any modification of the product.

The Food Standards Code is silent on “non GM” claims. **This also allows industry to make label statements identifying foods in which GM has not been used, thereby assisting consumer choice.**

**The current requirements are also enforceable as modified DNA or protein can be detected by quantitative assays – this is a critical issue for regulators required to enforce the standard.**

The current standard is therefore a reasonable outcome from what was a highly contentious and charged debate. Notwithstanding this, it is reasonable to explore the implications of changing the standard. Alternative options for GM labelling are presented in the table below, and compared with the current standard.

Clearly, any changes to the current GM labelling requirements would result in controversy. There is no practical, technically sound option which would tighten the current labelling provisions without causing a great proliferation of GM labels. The use of thresholds, or definitions around ingredients, food additives and processing aids end up being arbitrary, attracting criticism from those who seek stricter labelling and from those seeking less labelling.

**AFGC supports the current provisions of *Standard 1.5.2 Food Produced using Gene Technology* of the Food Standards Code. It requires labelling when food is altered, rather than labelling a process.**

### Recommendation

**That the Review note the complex nature of the genetically modified food debate and support the current *Standard 1.5.2 Food Produced using Gene Technology* as an appropriate, practical means of providing consumers meaningful information about the presence of food components changed as a result of genetic modification.**

SUBMISSION

Table. Broad comparison of the labelling requirements of *Standard 1.5.2 Foods derived from gene technology* with alternative approaches.

	Food <sup>1</sup>	Ingredient <sup>2</sup>	Additive <sup>3</sup>	Processing Aid <sup>3</sup>	Unintentional co-mingling <sup>4</sup>	Substantial change <sup>5</sup>	Feed <sup>6</sup>	Comment
Current Standard	Yes – DNA/ Protein >1%	Yes – DNA/ Protein >1%	Yes – DNA/ Protein >1% (flavours >0.1%)	No	Yes if >1% DNA/ Protein	Yes	No	Supportable technical basis for labelling i.e. if modified DNA/protein present. Refined GM foods are not required to be labelled Enforceable, including for imported foods. Practical to implement by industry. Any changes to the nature of food must be labelled.
Option 1. Label all GM foods or ingredients above a 5% threshold. Retain current provisions for additives and processing aids	Yes if >5% GM derived	Yes if >5%	Yes – DNA/ Protein >1% (flavours >0.1%)	No	Yes	Yes	No	Many foods containing appreciable levels of refined products (oils, starches etc.) will be labelled. Potential to distort the market and introduce costs as industry formulated to 4.9% with GM material and non-GM for the balance. Likely to be contentious around the “threshold level” as some would claim it is too high, other that it is too low. No assay available, thus enforcement is potentially costly and would need to audit QA systems. Difficult to enforce for imported foods. Any changes to the nature of food must be labelled
Option 2 Label when there is any GM use at all.	Yes – any level	Yes – any level	Yes – any level	Yes – any level	Yes – any level	Yes	Yes- any level	This labels the use of GM. Most food products currently would attract a label. Difficult to enforce. No assay available, thus enforcement is potentially costly and would need to audit QA systems. Difficult to enforce imported foods. Changes to the nature of food must be labelled
Option 3 Relax requirements to label only when food is changed by use of GM.	No	No	No	No	No	Yes	No	A label is required only when the use of GM causes a material change in the nature of the food, and ignores the use of GM technologies. Changes to the nature of food must be labelled.

<sup>1</sup> Packaged food as consumed pre-or post cooking. <sup>2</sup>Ingredient which might be purchased at retail – i.e. cooking flour, cooking oil. <sup>3</sup> Additive or processing aid as defined under the ANZ Food Standards Code. <sup>4</sup> Trace mixing of food components which occurs by chance along the supply chain. <sup>5</sup> A change to a food which occurs as a result of a genetic modification – e.g. high oleic soybean oil. <sup>6</sup> Labelling of products (meat, eggs, milk etc) from production animals fed GM feed components (not the feed itself).

## 9.2. Irradiation

**The labelling of irradiated food is not a food safety issue.** It has long been established that the irradiation of food is an effective sanitising procedure able to significantly reduce the levels of contaminating organisms which may lead to food spoilage or food poisoning. As with other technologies such as heat treatment there are biochemical changes which can occur in foods as a result of irradiation but the overwhelming scientific evidence is that these are not a public health issue.

The current labelling requirements were introduced following public debate which included some parties incorrectly stating that irradiation was not a safe process, and therefore consumers needed to be aware of its use through labelling.

AFGC did not support the need for labelling and considers the current labelling requirement an example of inappropriate mandatory labelling. The labelling does not pertain to the nature of the food. It only reflects a process the food underwent.

Moreover, and perhaps more worrying, the negative sentiment generated by the debate has resulted in a reticence on the part of the food industry to fully embrace the technology. This has denied consumers access to foods with additional benefits such as foods with extended shelf life.

### Recommendation

**That the Review note that *Standard 1.5.3 Irradiation of Food* requires the labelling of food as a result of a process (irradiation) and does not pertain directly to the food itself, and as such, should be reviewed against higher policy principles.**

## 9.3. Nanotechnology

**Labelling of nanotechnology food is not a safety issue.** FSANZ has indicated that foods with engineered nanotechnology particles will be dealt with as novel foods under the Food Standards Code. Foods will be approved on a case-by-case basis following appropriate presentation of supporting technical data which will include safety information. Notwithstanding this, nanotechnology has recently become a controversial topic within the broader food labelling debate.

AFGC has yet to formulate a position on the labelling of foods in which nanotechnology has been used. It is a challenging issue due to its complexity particularly regarding appropriate definitions of nanotechnology. AFGC considers, however that if an appropriate overarching food labelling policy is developed it will provide guidance to the sensible labelling of nanotechnology foods. This will ensure the debate around nanotechnology labelling is conducted in a manner which gives consumers confidence in the foods which might use the technology, and the food regulatory system which regulates them.

### Recommendation

**That the Review note the potentially valuable role of an overarching food labelling policy in providing guidance to the current debate on nanotechnology and food labelling.**

## 9.4. ENVIRONMENTAL LABELLING

Sustainability has become a major public policy issue. Consequently there have been numerous calls for specific food labelling to give consumers information about the environmental impact of products. AFGC supports the provision of information of this type of information as long as it is accurate and not misleading. In many cases companies make this type of information available through customer call centers.

AFGC considers that food product labelling for environmental issues should only be mandatory if government can demonstrate the need for the legislation according to COAG principles<sup>7</sup>. Furthermore, any legislation must be consistent with Australia's obligations under international trade agreements.

**AFGC does not support environmental legislation being promulgated through the Food Standards Code.** AFGC considers the Food Standards Code should be used to regulate food as a consumed product only. Furthermore FSANZ does not have the technical expertise in environmental issues required to assess such issues.

### Recommendation

That the Review find that:

- any mandatory environmental labelling of food products must satisfy COAG principles of good regulation and be consistent with Australia's obligations under international law; and
- should be promulgated through legislative instruments other than the Australia New Zealand Food Standards Code.

### 9.4.1. Carbon footprint labelling / Water footprint labelling

**AFGC does not support mandatory carbon footprint or water footprint labelling.**

Should the Government decide that informing Australians of the carbon dioxide embedded in the products and services they consume is a critical tool in helping to reduce the country's carbon dioxide emissions, then labelling should apply to all products and services. **Singling out food products for carbon dioxide footprint labelling, and only packaged foods, would be inappropriate, inequitable and ineffective as a regulatory measure.**

Moreover, methodologies for carbon accounting across different activities are still being developed, and whilst some standardisation has been introduced there remains a degree of uncertainty on the accuracy of the measures for some applications. There is, therefore, the potential to mislead consumers.

A similar argument exists for water footprint labelling.

### 9.4.2. Food Miles labelling

There have been calls for the labelling of food products to indicate the distant the food has travelled from production to retail. The rationale is that this provides a measure of the environmental impact of the food product and is designed to help promote the local production.

Studies have shown that the food miles concept is flawed<sup>31</sup>. It is a poor indicator of environmental impact.

**AFGC does not support the either the mandatory or voluntary use of food miles labelling as it is likely to mislead consumers.**

#### 9.4.2.1. Palm oil labelling

A very public recent labelling debate has been the whether palm oil should be declared on the ingredient list of food products. This demand is based on the belief that the food industry demand for palm oil is driving deforestation of in South East Asia to allow expansion of palm oil plantations. The consequence is the habitat of endangered species, and particularly orangutans, is being lost.

Current regulatory requirements allow palm oil to be declared as a 'vegetable oil' (along with other vegetable oils such as canola oil, soybean oil, sunflower seed oil). For many purposes with blending, these oils are interchangeable and the 'vegetable oil' declaration allows companies to change the oil they use based on price and availability of supply of the different oil, without a label change. This reduces costs for companies, with consumers ultimately benefiting from lower food prices.

**AFGC does not support mandatory palm oil labelling as:**

- there is no evidence that food industry demand is causing deforestation, rather it is illegal logging<sup>5</sup>; and
- even the proponents of such labelling do not claim it is critical information for consumers, **the aim is to save forest habitat and protect endangered species.**

**AFGC is highly sympathetic to the plight of endangered species and supports sustainable practices in the production of raw materials used in the food industry.** The Food Standards Code and food labelling is not, however, the appropriate policy instrument to address this issue as:

- it does not align with the objectives of the FSANZ act; and more importantly
- it will not work – deforestation can only work with strong local government sanctions.

AFGC supports the Roundtable on Sustainable Palm Oil and the use of sustainable palm oil in their production processes.<sup>32</sup>

---

<sup>31</sup> Saunders C., Barber A, Taylor, G. *Food miles - comparative energy / emissions performance of New Zealand's agriculture industry*. Lincoln University. Agribusiness and Economics Research Unit. Research report (Lincoln University (Canterbury, N.Z.). Agribusiness and Economics Research Unit) ; no. 285. 2006

<sup>32</sup> For more information on the AFGC's position go to [www.afgc.org](http://www.afgc.org) and download AFGC's submission to *Inquiry Into The Food Standards Amendment (Truth In Labelling – Palm Oil) Bill 2009*.

### 9.4.3. Animal Welfare

#### 9.4.3.1. 'Free range', 'barn fed' and other descriptors.

RSPCA Australia has called for standardised labelling of production animal derived foods stating that<sup>33</sup>

*'RSPCA believes:*

- *The public should have full and accurate information about the production method used for the animal products they buy.*
- *Labelling of food products should be clear and unambiguous.*
- *We need legally defined and nationally consistent definitions of the terms that describe a particular method of production (e.g. free-range).'*

AFGC supports the first two points but the provision of information can be provided by means other than labels, and often is. It is also useful for consumers if terms commonly used by industry are standardised and industry guidelines can assist. RSPCA makes it quite clear, however, that their aim is improve the welfare of production animals stating on their website:

*'...with increased consumer confidence and demand in such products, more and more producers will provide higher standards of welfare for the animals in their care.'*

**Mandatory food labelling standards have no role in animal welfare issues. AFGC supports other approaches including partnerships between Government and industry to ensure animal production systems meet community expectations with regard to animal welfare.**

AFGC also notes that RSPCA has developed an "RSPCA's Approved Farming" logo<sup>34</sup> which can be applied to animal derived food products if the production systems meet RSPCA animal welfare standards. This provides a means for industry to indicate adherence to animal welfare production standards and consumers to exercise choice based on animal welfare criteria.

Livestock industries are also developing industry guidelines to standardise terms such as 'free range' to ensure consumers are not misled.

#### **Recommendation**

**That the Review find that animal welfare concerns are beyond the scope of mandatory food labelling regulations, being better addressed through other policies or schemes such as the 'RSPCA's Approved Farming' program.**

<sup>33</sup> <http://www.rspca.org.au/how-you-can-help/campaigns/food-labelling.html>

<sup>34</sup> Have you got your paw of approval? RSPCA Brochure. [www.rspca.org.au](http://www.rspca.org.au)



## 10. FUTURE OF LABELLING

In its initial submission AFGC noted that advances in technology now allow direct transmission of information to consumers through mobile telephones or in store machines scanning the barcode and accessing databases of product specific data (reproduced in [Appendix 4](#)).

This technology has the potential to move at least one part of the labelling debate on – namely what information and how much information is critical for informed consumer choice.

The new extended labelling technology means that in the near future consumers will be able to access all sorts of information about food products, and food companies will be very happy to provide it.

**The extended labelling technology does not mean that there will no longer be a need for food packages to carry information – there will still be a basic requirement for key information for consumers particularly for information directly related to safety.**

Furthermore, the advent of the technology does not resolve some key issues around labelling - for example the issue of when information should be mandated on food labels (or in extended labelling), and when should it not.

Indeed it raises some pertinent questions also – for example can some current mandatory requirements be removed from the Food Standards Code. Once the technology becomes widely adopted it may be unnecessary to mandate food additives to be on food packages. The fundamental argument might be that as the current system provides little valuable information for most consumers (Section 4.1) and as long the information was readily available elsewhere, there is no advantage to mandating to be on food packages.

AFGC considers, extended labelling presents both challenges and opportunities. Establishing a sound food labelling regulatory policy will ensure consumers have high levels of regulatory protection, but at the same time allow the extended labelling technology to be adopted as rapidly as possible to the greatest advantage of consumers.

### Recommendation

#### That the Review:

- **consider the implications of new information technology applications for extending the labelling of food products; and**
- **ensure its findings are both compatible and relevant to a future where for most consumers information about food will be available in abundance and with immediacy.**

## 11. CONCLUSIONS

AFGC has long advocated the development of food labelling policy. Regulatory reforms introduced with the introduction of the Food Standards Code in 2001 have not calmed the controversial food labelling issues which have troubled the industry for so long, and undermined consumer confidence and trust in the information on food labels.

The industry has sought to proactively address some of these issues through investing in industry codes which have the objective of bringing standardised label statements and information formats onto food packs to assist consumer choice.

Government must also provide leadership in this area and set up agreed policy objectives for food labelling. This will go a long way to moving the food label debates away from the adversarial towards a more cooperative approach where the integrity of information is assured, the nutrition and health advice is well founded, and the utility of food labels is generally enhanced.

AFGC stands ready to provide further input to the Review and subsequent development of a food labelling policy.

## APPENDIX 1 – AFGC RESPONSE TO QUESTIONS POSED IN THE DISCUSSION PAPER

### Q1. To what extent should the food regulatory system be used to meet broader public health objectives?

- This question should be written – ‘*To what extent should food labelling regulations be used to meet the broader public health objectives?*’ in line with the Terms of Reference and the comments in the Discussion Paper 1.5. ‘*The focus of this review is not on food standards in general, but on the labelling of food*’.
- See Section 4.4.

### What is adequate information and to what extent does such information need to be physically present on the label or be provided through other means (e.g. education or website)?

- Due to practical considerations some packaged food is appropriately exempt from labelling, and in other circumstances certain products are only required to carry bare minimum labelling requirements. This must be preserved, it would be inappropriate to impose comprehensive mandatory labelling on all foods.
- Where packaged foods are not exempt from labelling, the information which should be mandatory on the food product label should be limited to:
  - a clear description of the food product;
  - directions for use and storage, if required;
  - key nutrition information to assist consumers construct diets to meet individual needs;
  - major allergen information if present;
  - other relevant public health warnings and advisory statements;
  - ingredients and additives used in the product;
  - use-by/ best-by dates;
  - lot /batch details (but only where date marking is not applied) to enable a food recall;
  - weight or measure of package (as per the Trade Measurement legislation);
  - country of origin declaration (as per ACCC safe harbour provisions);
  - manufacturers contact details or importer contact details;
  - consumer hotline or website; and
  - further information addressing major community food safety concerns if deemed appropriate by the ANZ Food Regulation Ministerial Council.
- Further information can be readily supplied voluntarily on pack, on websites or through new extended labelling technologies, covered by the overarching requirement that such information should be truthful and not misleading.

### Q3. How can accurate and consistent labelling be ensured?

- Consumers benefit the most when food labelling creates an impression of product nature and quality, and the product consistently meets or exceeds the consumer’s expectation based on this impression.
- Labels must accurately describe the product; however, the required level of accuracy differs depending on the label element, and the degree of precision with which the manufacturer can both control and measure the element being reported. If an allergen is not declared on the label it must not be present,

## SUBMISSION

although ensuring complete absence (i.e. not a single molecule) is not technically feasible for some products. On the other hand it is accepted that some variation in nutrient composition may occur due to seasonal variability in ingredients and the degree of processing or storage that they have undergone. Some nutrients degrade over time, and while a product may be perfectly safe and still contain an “adequate” level of nutrient, some nutrients may be significantly lower than the stated value at the end of shelf life.

- For some issues, such as the presentation of nutrition information that is consistent in format and layout from one product to another consistency is deemed to be important in assisting consumers find information they need, and ease of understanding.
- For most issues the level of accuracy and consistency required can be established by a “reasonableness” test. It is reasonable that Nutrition Information Panels are all similar in format (as required by the Food Standards Code). It would be unreasonable (for example) to require all food labels to use the same font, or to have to deem that “Nutrition Information Panel” was not equivalent to “Nutritional Information Panel” for the purpose of informing consumers of the macronutrient content

### Q4. What principles should guide decisions about government intervention on food labelling?

- Council of Australian Governments: Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Commonwealth of Australia 2004.
- This requires a strong case to be made for policy/regulatory intervention based on clear objectives being identified, evidence of effectiveness, and cost/benefit analysis of the intervention and potential alternatives as a Regulatory Impact Statement.
- The Government has confirmed this approach and seeks more rigour prior to introduction of regulations.<sup>35</sup>
- See Section 3.1.1 also.

### Q5. What criteria should determine the appropriate tools for intervention?

- The ACCC has established a comprehensive framework for considering the appropriateness of different forms of regulatory measures from black letter law through to voluntary industry codes. The fundamental principle is one of proportionate response.<sup>8</sup>
- For example, critical public health and safety issues – such as allergen labelling- require black letter law. Descriptors such as “fresh” are better left to industry codes.
- Additional considerations include how long the matter is to be addressed – some labelling may be considered in response to a transient issue and may be better suited to . The resources available for enforcement may also be a consideration. Industry may be more prepared than government to enforce a voluntary code to establish a “level playing field”.

### Q6. Is this a satisfactory spectrum for labelling requirements?

- A substantial proportion of the consumer’s diet is purchased and /or eaten in the absence of labelling provisions required of packaged food – this undermines arguments which have been used in the past for the critical need for some information requirements, such as the Nutrition Information Panel.
- There is a blurring of the divide between packaged food and unpackaged food with many products. For example many bread shops provide “freshly baked” products in plastic bags very similar to those used by mainstream bread products purchased in supermarkets, but they are not required to carry a Nutrition Information Panel, although they are required to have the information available and provide it when requested by a customer.

---

<sup>35</sup> “Tanner takes razor to red tape”. Australian Financial Review. 17 March 2010.

## SUBMISSION

- The definition of packaged food needs to be reconsidered to ensure that some products are not unfairly escaping regulatory requirements simply due to the nature in which they are presented to consumers.
- If information is considered indispensable on packaged foods (e.g. allergen labelling) then it is clearly critical for other foods as well.
- There are a variety of packaged foods that are specifically exempt from carrying all but the minimum labelling required under the Code on the basis that (a) the size of the package is too small to fit more information onto it, such as a packet of gum; (b) made/package on the premises and the purchaser is able to ask for information about the product from the person responsible for making it; (c) food provided at the express order of the purchaser, such as take-away meals or pizza; (d) food sold at fund-raising events, such as school fete.

### Q7. In what ways could these misunderstandings and disagreements be overcome?

- Development of a clear food labelling policy which encompasses the policy scope and objectives of food labelling would assist all stakeholders to understand what issues food labelling is expected to address, and what it is not.
- See Section 3 also.

### 8. In what ways can food labelling be used to support health promotion initiatives?

- See Section 4.

### Q9. In what ways can disclosure of ingredients be improved?

- See Section 4.1.

### Q10. To what extent should health claims that can be objectively supported by evidence be permitted?

- See Section 7.2 also.

### Q11. What are the practical implications and consequences of aligning the regulations relating to health claims on foods and complementary medicine products?

- The food/drug interface is blurred, particularly with over-the-counter and complementary medicines. In particular, there are significant restrictions over the promotion and marketing of weight-loss foods which are determined to be Medical Foods and governed under the Therapeutic Drugs Administration.
- These restrictions limit consumer choice, but also restricts the choices available through health professionals, and subsequently defeats the public health objectives in tackling the obesity epidemic. Regulations should be aligned to ensure that companies cannot “game” the regulations by positioning a product on one side of the interface, rather than the other. However, this should be with a view to ensure that prohibitions on labelling and promoting of foods is not made any more restrictive than is already the case.
- More sophisticated guidance than can readily be provided through regulation can be encompassed in a voluntary industry code mechanism, including adjudication on products which might be unclear in their positioning.

### Q12. Should specific health warnings (e.g., high level of sodium or saturated fat per serve) and related health consequences be required?

- The NIP provides consumers with the content of risk associated nutrients of public health significance in a food product. They can refer to it on products which might also have specific nutrient content claims such as low fat claims.
- Introducing mandatory health warnings on products based on their nutrient profile would be extremely problematic as it would require different criteria for different foods and consequently create boundaries across which foods might move with only very minor reformulations. This would lead to profound enforcement difficulties.

## SUBMISSION

- It should be noted that mandatory health warnings based on food nutrient profiles are not the converse of health claims – and one should not be traded for the other. Health claims are envisaged as being highly targeted nutrition and health messages on specific foods aimed at population sub-groups for whom the message is particularly relevant. Health warnings by their nature would not be targeted but across all foods, even food categories which are nominally high in some risk associated nutrients, but important carriers of other critical nutrients – such as calcium in dairy products, iron in meat, both of which are also relatively high in saturated fat.

**Q13. To what extent should the labelling requirements of the Food Standards Code address additional consumer-related concerns, with no immediate public health and safety impact?**

- The Food Standards Code should only address issues which are pertinent to the consumer when the food is consumed – other regulatory frameworks can address other issues – see Section 3.1.1 of this submission

**Q14. What criteria should be used to determine the inclusion of specific types of information?**

- Criteria should include but not be limited to:
  - is this information critical to providing informed choice and why?
  - what are the other potential sources of the same information?
  - is the information readily sourced and provided by industry or will it impose costs either directly or indirectly? If so, how much?
  - is the labelling enforceable? Can compliance or non-compliance be readily demonstrated?
  - will some sections of industry, or the community be disadvantaged by the requirement?
  - is it compatible with Australia's international trade obligations?
  - is there an alternative approach which might be better, i.e. voluntary labelling?
  - has it passed a regulatory impact statement?

**Q15. What criteria should determine which, if any, foods are required to have country of origin labelling?**

- See Section 8..

**Q16. How can confusion over this terminology in relation to food be resolved?**

- See Section 8.

**Q17. Is there a need to establish agreed definitions of terms such as 'natural', 'lite', 'organic', 'free range', 'virgin' (as regards olive oil), 'kosher' or 'halal'? If so, should these definitions be included or referenced in the Food Standards Code?**

- These terms are better dealt with in industry codes which can be more comprehensive and more responsive to specific needs either of the community or industry.
- The TPA provides background regulatory support through ensuring that the use of these terms is not misleading.

**Q18. What criteria should be used to determine the legitimacy of such information claims for the food label?**

- There are two ways in which such validity of such claims can be assured:
  - Through use of the TPA which requires consumers not to be misled; and
  - Industry sponsored codes which can set criteria for specific label claims which fall outside the food standards. Well supported industry codes include compliance monitoring activities and have mechanisms for complaints to be brought against companies for claims considered to be inaccurate and potentially misleading.

SUBMISSION

Q19 In what ways can information disclosure about the use of these technological developments in food production be improved given the available state of scientific knowledge, manufacturing processes involved and detection levels?

- It is important to note that introduction of modern technologies in the food industry is carried out with full regulatory oversight, and when necessary, special approval processes exist to ensure the use of the technologies does not result in added risk to public health and safety. Labelling associated with technologies (such as gene technology labelling) does not add to protection of public health and safety in these cases.
- Information about the food industry and the technologies used is becoming more available each day with the introduction of modern information systems. Extended labelling through the use of in-store and mobile scanning devices promise almost instant access to large amounts of information about products.
- Although detection levels are improving they are not appropriate for the use of technologies which do not change the product in any way. In these cases specific quality assurance systems which can be audited are more appropriate ways of making sure any label claims are accurate.

Q20. Should alcohol products be regulated as a food? If so, should alcohol products have the same labelling requirements as other foods (i.e., nutrition panels and list of ingredients)? If not, how should alcohol products be regulated?

- See Section 7.7.

Q21. Should minimum font sizes be specified for all wording?

- See Section 4.1.

Q22. Are there ways of objectively testing legibility and readability? To what extent should objective testing be required?

- See Section 4.1

Q23. How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?

- Food companies are continually looking at ways to attract consumers to their products whilst still meeting all the regulatory label requirements.
- There is unlikely to be a single “best way”, but rather a number of solutions which constantly evolve as consumers and products change.

Q24. In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels?

- Consumers can be informed through information being readily available on both industry and government websites. These websites can explain food label terms, particularly some of the technical terms, as well as provide advice about how to use labels to compare products across key attributes. FSANZ currently provides this service.
- Additional new technologies are becoming available through the use of social networking sites and through vehicles such as Twitter. These new forums for both networking and marketing could be explored by industry working in partnership with government.
- It might also help to provide a set of resources and lesson plans for high school teachers to be able to teach children as part of the school health or home economics curriculum.

Q25. What is an appropriate role for government in relation to use of pictorial icons on food labels?

- Government has a role in ensuring the use of icons does not mislead consumers, and it can enforce this under legislation such as the TPA.

## SUBMISSION

- Industry codes can provide further advice to companies about the use of such icons including ensuring that supporting organisations are reputable.
- It would be highly inappropriate for government icons which certify a product to meet Australian Government standards to be used, as all products should meet such standards and implies that any food not carrying an official government icon is deficient.

Q26. What objectives should inform decisions relevant to the format of labelling?

- See Section 3.

Q27. What is the case for food label information to be provided on foods prepared and consumed in commercial (e.g., restaurants, take away shops) or institutional (schools, pre-schools, worksites) premises? If there is a case, what information would be considered essential?

- Ideally consumers would be able to readily access information about all the foods they eat on all occasions, but practically and pragmatically this is never going to be possible – it is unlikely that cakes at a church raffle are going to be accompanied by a NIP partly because of the difficulty of enforcement and partly because of the significant burden it places on such sellers/producers, and partly because it would be deemed excessive regulation by most parties.
- Many restaurant chains are already voluntarily providing nutrition information particularly in the Quick Service Restaurant sector where menu and product standardisation lends itself well to presentation of NIPs. Under conditions where there is significant product quality control and minimal variation in product assembly, it is possible to provide some useful information, but is unlikely to be possible in other service related outlets without allowing for a significant degree of variation and accuracy of the data from one sample to another.
- Given the practical difficulties it would be appropriate that voluntary extension of nutrient labelling be encouraged perhaps with different industry sectors developing relevant guidelines.

Q28. To what degree should the Food Standards Code address food advertising?

- See Section 7.5

Q29. In what ways can consistency across Australia and New Zealand in the interpretation and administration of food labelling standards be improved?

- See Section 6.0.

Q30. In what ways can consistency, especially within Australia, in the enforcement of food labelling standards be improved?

- See Section 6.

Q31. What are the strengths and weaknesses of placing the responsibility for the interpretation, administration and enforcement of labelling standards in Australia with a national authority applying Commonwealth law and with compatible arrangements for New Zealand?

- See Section 6.

Q32. If such an approach was adopted, what are the strengths and weaknesses of such a national authority being an existing agency; or a specific food labelling agency; or a specific unit within an existing agency?

- See Section 6.

Q33. If such an approach was adopted, what are appropriate mechanisms to deal with the constitutional limits to the Commonwealth's powers?

- See Section 6.



SUBMISSION

Q34. What are the advantages and disadvantages of retaining governments' primary responsibility for administering food labelling regulations?

- It is important that some aspects of labelling such as prevention of misleading information and the provision of information critical to the safe use of products (i.e. advisory statements, allergen labelling statements, directions for use) is retained by Government. This provides high levels of protection for consumers, and high levels of certainty for industry on what labels must include, and imposes a clear obligation on industry as to requirements. Consumers can also have confidence that key information about foods will always be present on food labels.
- Other aspects of food labelling which are less critical are more efficiently regulated through industry co-regulatory codes of practice or simple guidelines. The ACCC has developed a comprehensive practical framework for the development of industry codes based on the principle that for matters where the potential for consumer detriment, or restrictions on competition are minimal, voluntary industry codes are more appropriate than full regulation.

Q35. If a move to either: self regulation by industry of labelling requirements; or co-regulation involving industry, government and consumers were to be considered, how would such an arrangement work and what issues would need to be addressed?

- See Section 4 of this submission.

Q36. In what ways does such split or shared responsibility strengthen or weaken the interpretation and enforcement of food labelling requirements?

- Split or shared responsibility invariably leads to a lack of uniform interpretation of labelling standards. There are numerous examples of costs being imposed upon food industry as a result of differences of opinion between agencies. This becomes critical when considering issues for which there is no objective technical measure. For example – there is no agreement, or standard approach, for determining what is misleading or not misleading for the average consumer.

Q37. What are the strengths and limitations of the current processes that define a product as a food or a complementary medicine?

- Foods and complementary medicines frequently have many of the same ingredients and thus defining the product requires an assessment of a number of factors including: levels of particularly ingredients, presentation of the product, intended use of the product, marketing of the product and primary retail outlet.
- In reality there are no processes which formally define a product as a food or complementary medicine – this is largely left to the manufacturer. The issue is that due to lack of alignment of regulations on either side of the regulatory divide, there is potential for commercial advantage being gained if the product sits on one side or the other. This is regulatory distortion of the market place.

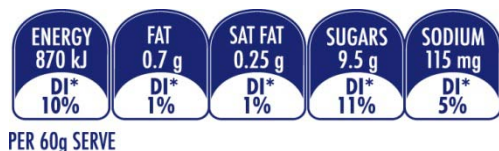
Q38. What are the strengths and weaknesses of having different approaches to the enforcement of food labelling standards for imported versus domestically produced foods?

- There is very little checking of the food labels of imported foods by AQIS as products are rarely declared "risk foods" based on the compliance of their labels. This potentially puts domestic manufacturers at a competitive disadvantage.
- The evidence of this has been seen in the number of food recalls undertaken for failing to declare the presence of an allergen. In the period since 1<sup>st</sup> July 2009 there have been 11 food recalls for the undeclared presence of allergens in foods, of which 3 were due to Australian manufactured product and 8 were imported product. There is scope for a more systematic review of imported food labels by AQIS, and a greater effort by local councils and jurisdictions to enforce these laws through marketplace surveillance.

Q39. Should food imported through New Zealand be subject to the same AQIS inspection requirements?

- Trans-shipment through New Zealand should not reduce the level of enforcement of regulatory requirements. If there is going to be a single border policy for product entering Australia and New Zealand, there must be agreement between the bi-national border control agencies on how this to be achieved. The TTMRA does not absolve either agency their responsibility to ensure imported products comply with legal requirements.

## APPENDIX 2 – DAILY INTAKE GUIDE LABELLING SCHEME



The Daily Intake Guide helps consumers make easy, smart choices about the food they need to include in their diet and ultimately helps consumers see the relationship between a serve of food and their daily requirements.

### What is daily intake labelling?

The Daily Intake Guide is the presentation of ‘thumbnails’ on a product’s packaging, which indicate the amount per serve for energy and the six nutrients—protein, carbohydrate, sugars, fat, saturated fat and sodium—and the percentage of daily intake these represent per serve.

In line with the Food Standards Code, the ‘daily intakes’ in the thumbnails are based on those for an average adult diet of 8700KJ, including food and drink.

### How does it work?

The Daily Intake Guides are like little windows that make it easy to see what’s in a serving, and how much it contributes to the average diet. When people know what’s in their food, it’s easier for them choose what and how much to eat.

The Daily Intake Guide brings the nutrition information to the front of the pack and provides additional information to show the percentage of daily intake these represent per serve.

In the example above, a serve of the product provides 870 kilojoules, which is 10 per cent of an average adult’s daily energy needs.

### What do consumers think?

Consumers want simple information that helps them to understand what a serve size is, how foods fit into their diet, and how to best meet their nutrition and activity needs.

Research undertaken on behalf of the Australian Food and Grocery Council (AFGC) in June 2008, shows that not only do consumers understand the Daily Intake Guide but that many are finding it useful when deciding whether or not to purchase a food or beverage product.

*Uptake in awareness of the Daily Intake Guide* – almost three in four Australian consumers surveyed (74 per cent) say that they have heard of the Daily Intake Guide.

*Belief that the Daily intake is easy to understand* – two in three Australian consumers surveyed (66 per cent) say that they believe that the Daily Intake Guide is easy to read and understand.

*Belief that the Daily Intake Guide helps in making a purchasing decision* – almost three in five Australian consumers surveyed (58 per cent) believe that the Daily Intake Guide provides the type of nutritional information needed to help decide whether to buy a product.

*Uptake of the Daily Intake Guide* – More than one in three Australian consumers surveyed (35 per cent) have used the Daily Intake Guide to make a purchasing decision.

SUBMISSION

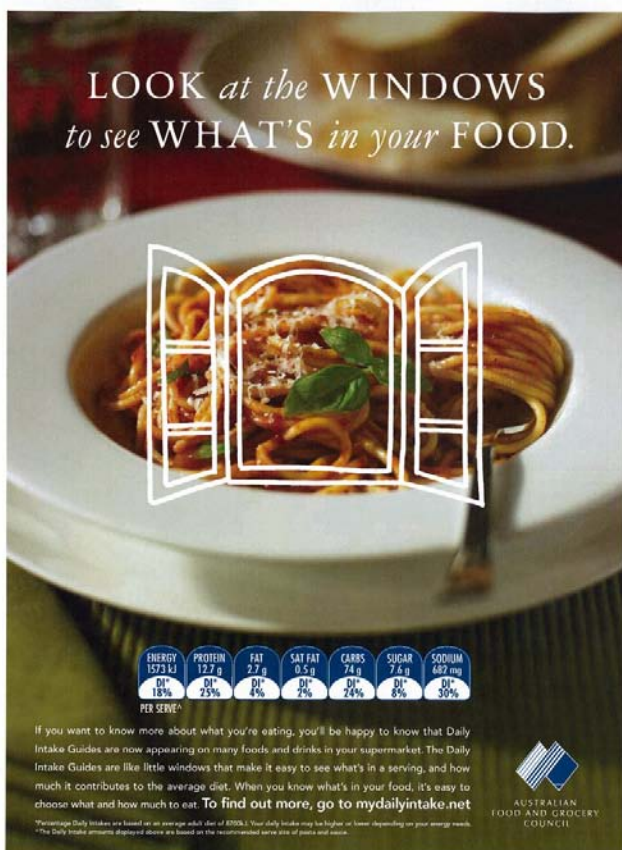
Who is behind it?

The Daily Intake Guide is a voluntary scheme, which has been developed by the Australian Food and Grocery Council in consultation with a range of stakeholders including the Dietitians Association of Australia.



The scheme is backed by a number of Australia's leading food and beverage companies as well as McDonald's, Metcash, Woolworths, Coles, Franklins, the Australian Beverages Council and the Confectionery Manufacturers of Australasia.

The Daily Intake Guide is used by around 200 brands and currently appears on more than 2000 products available in supermarkets in Australia. Companies wishing to adopt this scheme may do so free of charge. However, in choosing to adopt the scheme companies must apply it according to the following style guide.



For more information on the Daily Intake Guide, go to [www.mydailyintake.net](http://www.mydailyintake.net).

This website provides further information about the scheme including the daily intake values for energy and the nutrients. There are also calculators to help people work out their BMI and their own daily energy requirements.

For further information

For more information on the Daily Intake Guide, go to [www.mydailyintake.net](http://www.mydailyintake.net).

This website provides further information about the scheme including the daily intake values for energy and the nutrients. There are also calculators to help people work out their BMI and their own daily energy requirements.

## MARKET USE OF DAILY INTAKE GUIDE – AUGUST 2009 AUDIT

### OVERVIEW

Following is the list of products recorded during the August 2009 store audit of Daily Intake Guide Labelling on.

The Supermarket audit survey was conducted over a two week period during August 2009 in the same six Illawarra supermarkets (N.S.W.) as utilised for the previous audit (February 2009). The stores were: Wollongong Woolworths, Figtree Coles and Dapto Independent Grocers of Australia (IGA), Shellharbour Aldi, Bi-Lo Thirroul, and Woonona Franklins. Verbal permission to conduct the audit study was sought from the customer service desk upon entry to each store.

The front of packaging of all store products was examined for the use of the AFGC daily intake thumbnail labelling with the following details being recorded: brand, product name and whether energy, energy plus four nutrients – fat, saturated fat, sugar and sodium only or all of the seven mandatory elements of the nutrition information panel were displayed. Additionally, the inclusion of additional nutrients as a component of the thumbnail was recorded as well as the level of compliance with the AFGC general usage guidelines % Daily Intake (AFGC, 2007). As previously reported, various package sizes of a single brand item were not recorded separately; any one SKU carrying the labelling was reported as a positive finding.

The front of packaging of all store products were examined also for the use of the CMA Be Treatwise responsible treating message labelling with the following details recorded: brand, product name, whether the %DI thumbnail was included on the back of the package, and compliance issues with the CMA Be Treatwise Usage Guide (CMA, 2008).

Also, various package sizes of a single brand item were not recorded separately. Therefore it is a conservative estimate of the number of products carrying Daily Intake Guide Labelling and is not representative of the number of SKUs with Daily Intake Guide Labelling.

### NUMBER OF PRODUCTS

1. The number of companies/brands using Daily Intake Guide Labelling on front of pack has increased from three in February 2007, 13 in August 2007, 35 in February 2008, 57 in August 2008, 82 in February 2009 to 177 in August 2009.
2. The number of products found displaying the %DI thumbnails has increased from 1167 to 1939 in the six months since February 2009. Of these 60% displayed the energy only thumbnail while 40% displayed energy plus other nutrients.
3. Of the products displaying energy and other nutrients 33% displayed energy plus the six other mandatory NIP nutrients, and 67% displayed energy plus four other NIP nutrients (fat, saturated fat, sugar and sodium).
4. 14% of product items displayed %DI thumbnails for further additional nutrients.
5. Excluding Aldi products which have a non-compliant design, compliance has increased since the previous audit from 66% to 74.9%
6. There are 143 products displaying the CMA Be Treatwise responsible treating message labelling across eight companies.

SUBMISSION

**Daily Intake Guide Labelling was found on products in the following food categories:**

Bread	Cordials and Water Ices	Biscuits and Crackers
Breakfast Cereals	Soft Drinks	Ready Foods
Cooking Sauces	Sports Drinks	Soup Mixes
Dairy	Frozen Foods	Dressings
Cheese	Frozen Meals	Savoury Snacks
Milk and Substitutes	Ice Cream	Spreads & Dips
Yogurt	Juices	Confectionery
Drink Bases	Nutritious Snacks	Canned Vegetables and Legumes
Drinks Other	Processed Meats	

**Brands Using the Daily Intake Guide Labelling**

Kellogg's	Del Rivo	American
Nestle	West Cliff	Chicken Tonight
Uncle Toby's	Sustagen	Priano
New Day	Horlicks	Carloni
Lowan	Maggi	Silks
Golden Vale	Continental	Coolway
Goldenvale	Jade	Pure Vita
Just Organic	Rosti	Merryfield
Specially Selected	Asia Specialties	Chef's Cupboard
Sweet Vine	Corale	Stonemill
Imperial Grain	El Tora	The Olive Tree
Remano	Hungry Joes	Flora
Burgen	McCain	Woolworths
Black and Gold	Bazaar	Western Star
White Mill	Ocean Royal	Bertolli
Farm House	Lean Cuisine	Little Chef
Tip Top	Viking	DON
Wonder White	Farmwood	HANS
Golden	Brannans	KR
Fresh Approach	Elmsbury	Courtway
Fontelle	Seasons Pride	Hydale
Goodness Superfoods	Birds Eye	Lodge Farms
B Light	Steggles	Ocean Rise
Baker's Life	Baiada	Portview
Baker's Taste	Papa Giuseppe	Pantalica Cheese Co.
Forresters	Market Fare	Cowbelle
Berri	Bulla	Mainland
Mildura	Cadbury	Homebrand
Quelch	Duches	Vitasoy
Extra Juicy	No Frills	Pura
Daily Juice Co.	Nestle Peters	Big M
Ribena	Authentic Ice Cream Company	Biocult
Just Juice	Streets	Dairy Farmers
P and N	Entice	Farmers Union
Spring Valley	Calippo Minis	Farmdale
Prima	Kantong	Inner Goodness
Pop Tops	Dolmio	New Dawn
Kraft	Patak's	Moove
Fruit Solesta	Worldwide Sauces	Moobox

SUBMISSION

Yoplait	Extra Juice	Sakata
Dairy Bliss	Waterfords	Nibisco
Brooklea	Deep Spring	Arnott's
Lytos	Frucor	Damora
Campbells	Lipton	Belmont Biscuit Co.
Merevale	Nestea	Café Bistro
Country Cup	Bisleri	Choceur
Smiths	IGA	Maitre D
Red Rock Deli	IGA Frenzy	International Cuisine
Grain Waves	IGA Signature	Well Naturally
Doritos	Powerade	Edgell
Parkers	PUMP	Flirt
Chazoos	Glaceau	B Natural
Cheetos	Mizone	Coles
Cool Pack	Propel	Dominion
Cottee's	Gatorade	Toblerone
Bundaberg	Triumpe	Celebre
Coca Cola	Parkwood	Sweet Valley
Pepsi	Top Taste	New Season
Kirks	Ministry of Muffins	
Schweppes	Dairy fine	

Note: The retailer *Foodstuffs* in New Zealand also uses DIG labelling on its house brand products.

SUBMISSION

EXAMPLES OF TRAFFIC LIGHT LABELLING FAILURES

The examples below demonstrate that traffic light classification<sup>36</sup> of foods based on nutrient profiling cannot reliably distinguish between some food types. DIG labelling allows a precise comparison.



ENERGY 290 kJ DI* 3%	FAT <1 g DI* 0%	SAT FAT <1 g DI* 0%	SUGARS 10 g DI* 11%	SODIUM 18 mg DI* 0.8%
-------------------------------	--------------------------	------------------------------	------------------------------	--------------------------------

PER 20g SERVE



ENERGY 538 kJ DI* 6%	FAT 0.2 g DI* 0.3%	SAT FAT 0 g DI* 0%	SUGARS 25.3 g DI* 28%	SODIUM 18 mg DI* 0.8%
-------------------------------	-----------------------------	-----------------------------	--------------------------------	--------------------------------

PER 40g SERVE

This food has more than twice the sugar.



ENERGY 555 kJ DI* 6%	FAT 15 g DI* 21%	SAT FAT 3 g DI* 13%	SUGARS 0 g DI* 0%	SODIUM 0 mg DI* 0%
-------------------------------	---------------------------	------------------------------	----------------------------	-----------------------------

PER 15ml SERVE



ENERGY 518 kJ DI* 6%	FAT 14 g DI* 20%	SAT FAT 2 g DI* 8%	SUGARS 0 g DI* 0%	SODIUM 0 mg DI* 0%
-------------------------------	---------------------------	-----------------------------	----------------------------	-----------------------------

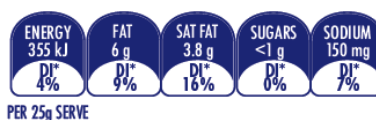
PER 15ml SERVE

This food has 50% more saturated fat

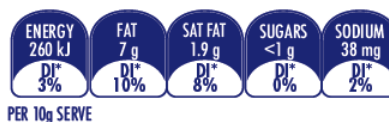
<sup>36</sup> As determined by the UK Food Standards Agency system.



SUBMISSION



This food has almost 50% more saturated fat.



This food has 50% more energy

SUBMISSION

**APPENDIX 3. CONSUMER ISSUES – DATA FROM THE MARKET**

Food companies operate consumer call centres (1-800 numbers, and email) to receive consumer inquiries (questions, comments and complaints) regarding products. Companies keep a record of the inquiries in order track specific issues and assist their response to overall market concerns.

Recent records of a number of AFGC companies are presented below. The key points are:

- 1) there is a great deal of variation in the important issues from company to company; and
- 2) the importance of issues can changes substantially from year to year.

**Company A**

Issue	2009		2010 First Quarter	
Halal	829	29%	284	27%
Gluten	757	27%	248	23%
Ingredient enquiry	234	8%	79	7%
Caffeine	203	7%	68	6%
Dosage	188	7%	0	0%
Nutritional Values	179	6%	56	5%
Vegetarian	111	4%	57	5%
Other Food Allergies	96	3%	0	0%
Nuts and peanuts.	91	3%	55	5%
Genetic Engineering	86	3%	0	0%
Palm Oil	59	2%	128	12%
Glycaemic index	0	0%	46	4%
Diabetic	0	0%	50	5%
<b>Total</b>	<b>2833</b>	<b>100%</b>	<b>1071</b>	<b>100%</b>

**Company B**

Issue	Year to April 2010	
Allergen Inquiry	835	15%
Sensitivities Inquiry	114	2%
Suitable For inquiry	168	3%
General Nutritional Inquiry	463	8%
Can Code Inquiry	1106	19%
General Code Inquiry	425	7%
Country of Origin Inquiry	781	14%
Ingredients Inquiry	281	5%
Non Specific Feedback	295	5%
Cooking Instructions	731	13%
Recycling	14	0%
Design	390	7%
Label Information Ambiguous	89	2%
<b>Total</b>	<b>5692</b>	<b>100%</b>

SUBMISSION

Company C

Issue	2008		2009		2010 (YTD)	
General nutrition	1345	42%	1030	39%	377	41%
Gluten	528	16%	463	18%	150	17%
Environment/recyclability	359	11%	334	13%	110	12%
Allergens/sensitivities	303	9%	274	10%	86	9%
Caffeine	269	8%	215	8%	71	8%
Product sourcing	117	4%	71	3%	23	3%
Animal testing	82	3%	58	2%	14	2%
Vegetarian/ Halal	74	2%	91	3%	43	5%
MSG	54	2%	37	1%	13	1%
Dairy ,Peanut/Tree nut	50	2%	32	1%	14	1%
Other	13	1%	8	~1%	3	~1%
<b>Total</b>	<b>3194</b>	<b>100%</b>	<b>2613</b>	<b>100%</b>	<b>904</b>	<b>100%</b>

Company D

Issue	2009	
Allergy - Coeliac/gluten	1,111	51%
Religious Halal/Kosher	156	7%
Allergy - General Enquiry	135	6%
Misc	105	5%
Country Of Origin	68	3%
General Ingredient	66	3%
Vegetarian	63	3%
Allergy - MSG	59	3%
Sodium	40	2%
Cinnamon vs Cassia	37	2%
Allergy - Egg	33	2%
Allergy - Peanuts	29	1%
Ingredient Conversion	29	1%
Genetic Engineering	27	1%
Nutritional - General	26	1%
Allergy - Dairy	25	1%
General Health Enquiry	25	1%
Vegetable Oil (incl. Palm Oil)	24	1%
Enquiry-Heat Level	22	1%
Allergy - Soy	14	1%
Vegan	14	1%
Health/medical	13	1%
Allergy - nut allergy	11	1%
Allergy - Chilli	8	0%
Irradiation	7	0%
Yeast	6	0%
Allergy - Fish	6	0%
Allergy - Sesame Seeds	2	0%
Allergy - Shell Fish	2	0%
Allergy - Tree Nuts	1	0%
<b>Totals:</b>	<b>2,164</b>	<b>100%</b>

**Company E**

<b>Issue</b>	<b>2008 (%)</b>	<b>2009 (%)</b>	<b>2010 (%)</b>
Vegetable Oil Enquiry	8.9	10.1	15.5
Free from Gluten Enquiry	12.6	13.9	8.2
Religious Enquiry	14.5	13.1	9.3
Vegetarian/Vegan Diet	4.7	7.8	5.6
Other Ingredient Enquiry	6.8	7.3	5.2
Emulsifier Enquiry	1.3	2.4	2.9
Disapprove of Ingredient	14.6	4.5	2.7
Gelatine Enquiry	1.3	2.0	2.4
Disapprove of Salt Level	0.4	0.7	1.7
Free from Nuts Enquiry	3.9	3.6	1.7
Cocoa Fair Trade Enquiry	0.5	1.4	1.5
Free from Egg Enquiry	1.6	2.7	1.5
Trans Fatty Acids	2.2	1.8	1.3
Free from Dairy Enquiry	1.9	2.1	1.3
Request for other Nutritional Info	1.7	2.9	1.3
Glycemic Index Enquiry	1.5	1.6	1.3
Request for nutritional table	1.2	1.7	0.8
MSG Enquiry	2.5	1.8	0.8
Disapprove of Flavour Enhancer	1.6	1.7	0.8
GMO Enquiry	2.5	1.8	0.7
Free from specific flavour Enquiry	0.4	1.1	0.7
Free from other specific substance	1.3	1.6	0.6
Sodium/Salt Enquiry	0.9	0.9	0.6
kJ or Calorie Enquiry	0.8	1.2	0.6
Imported Vegetable Enquiry	0.6	0.7	0.5
Sugar Enquiry	0.7	0.6	0.5
Fat Enquiry	0.9	0.3	0.4
Serving Size Enquiry	0.1	0.5	0.4
Preservative Enquiry	0.9	0.9	0.4
Flavour Enhancer Enquiry	1.5	0.4	0.3
Free from soy Enquiry	0.4	0.5	0.3
Diabetic Enquiry	0.6	1.1	0.3
Free from Yeast Enquiry	0.4	1.1	0.3
School Canteen Enquiry	0.2	0.3	0.3
Potassium Enquiry	0.5	0.3	0.3
Antioxidants Enquiry	1.4	1.2	0.3
Special Dietary - Other Enquiry	0.8	0.1	0.2
Free from specific colour Enquiry	0.3	0.7	0.2
Cholesterol Enquiry	0.2	0.1	0.2
Allergy Disclaimer	0.0	0.1	0.1
Fibre Enquiry	0.1	0.3	0.1
Protein Enquiry	0.1	0.2	0.1
Free from Wheat Enquiry	0.1	0.2	0.1
Free from Fish/Shellfish	0.1	0.3	0.1
Natural Flavours Enquiry	0.3	0.1	0.0

## APPENDIX 4. EXCERPT FROM AFGC INITIAL SUBMISSION TO THE REVIEW

The concept of extended labelling

Almost all consumer goods (foods, homecare products, clothes, electronics etc.) in developed countries (and many in the developing world) carry a bar code.



Figure1. Bar code with unique product identifier number.

The bar code is the graphical, computer readable, representation of a global unique numerical product identifier. The bar code can be scanned at any point in the supply chain to assist stock movement and control. It also scanned at final point of sale to assist check-out operations (i.e. price), and to record within the business the sale of the item.

The bar code system, and the underlying standard for the unique product identifier, is administered by a global, not for profit organisation GS1. In Australia, GS1 Australia is the authorised organisation that can issue unique global identifiers under the GS1 System. The GS1 System is supported by the many organisations in the supply chain including manufacturers, distributors, retailers and public sector organisation such as hospitals and custom services.

GS1 standards provide a framework that allows products, services and information about them to move efficiently and securely along the supply chain and around the world.

The concept of Extended Packaging has been developed by GS1 and it is centred on “shoppers” using their Mobile Phones (and mobile technologies) to access product information.

In simple terms, a “shopper” can use the camera in their mobile phones to scan the bar code on the product’s packaging and extract the unique product identifier represented by the bar code. A purpose built application in the mobile phone uses this unique identifier to access a database, via the internet, and obtain specific information about this product. The unique identifier or bar code number is used as the reference key.

**This product information can then be displayed for the “shopper” in their mobile phone. It could display information such as the presence or absence of allergens, an extended nutrition information panel and specific or general dietary advice, or more general information about the product and its origins.**

Extended packaging services using mobile technology are already operational in many parts of the world via GS1 organisations and in Australia pilot projects are already underway with the assistance of GS1 Australia.

## SUBMISSION

This type of service effectively “extends the product’s packaging” through the use of mobile technologies by allowing the consumer to access additional product information and leveraging already existing technology (bar codes) to do so. In doing so it provides a solution to:

- consumer demand for additional information;
- limited space on packaging; and
- static nature of pack information

The systems will work like this (see figure below):

- When shopping, consumers will be able to scan the bar code on the product with their mobile phone camera or through an in store scanner.
- A request is sent by the mobile phone or scanner to a service provider to the database for information.
- Database information is sent back to the consumers mobile phone or scanner..
- Data is kept current by food companies up loading data to the database.

The technology therefore represents an alternative option which would be available for food companies to provide further information to consumers about their products. In this sense it is similar to the web-sites and 1-800 telephone numbers which are currently available to consumers. An advantage of the using mobile phones and in-store scanners is the convenience it provides to consumers at point of sale.

To take maximum advantage of the system, the consumers using the mobile phone option may choose to “customise” the service so that only information of particular interest to them will download. For example, they may request only data on a specific allergen, or information relevant to the management of health issue (e.g. hypertension) to be downloaded.

There will be costs and resource constraints associated with the gathering, codifying and verifying the information around a set of agreed business rules. It will be incumbent upon the food industry to consider what information and in what form the information should be provided to benefit consumers the most. So the challenges facing the industry and its stakeholders today in determining appropriate label information and its presentation will not disappear – they will remain. But the value of information presented to consumers as individuals can be enhanced substantially.

This form of extended labelling opens up additional avenues for consumer communication and education, including general health and lifestyle advice which might come from government sources.

**The corollary is that now, more than ever, a comprehensive labelling policy is required.**

SUBMISSION

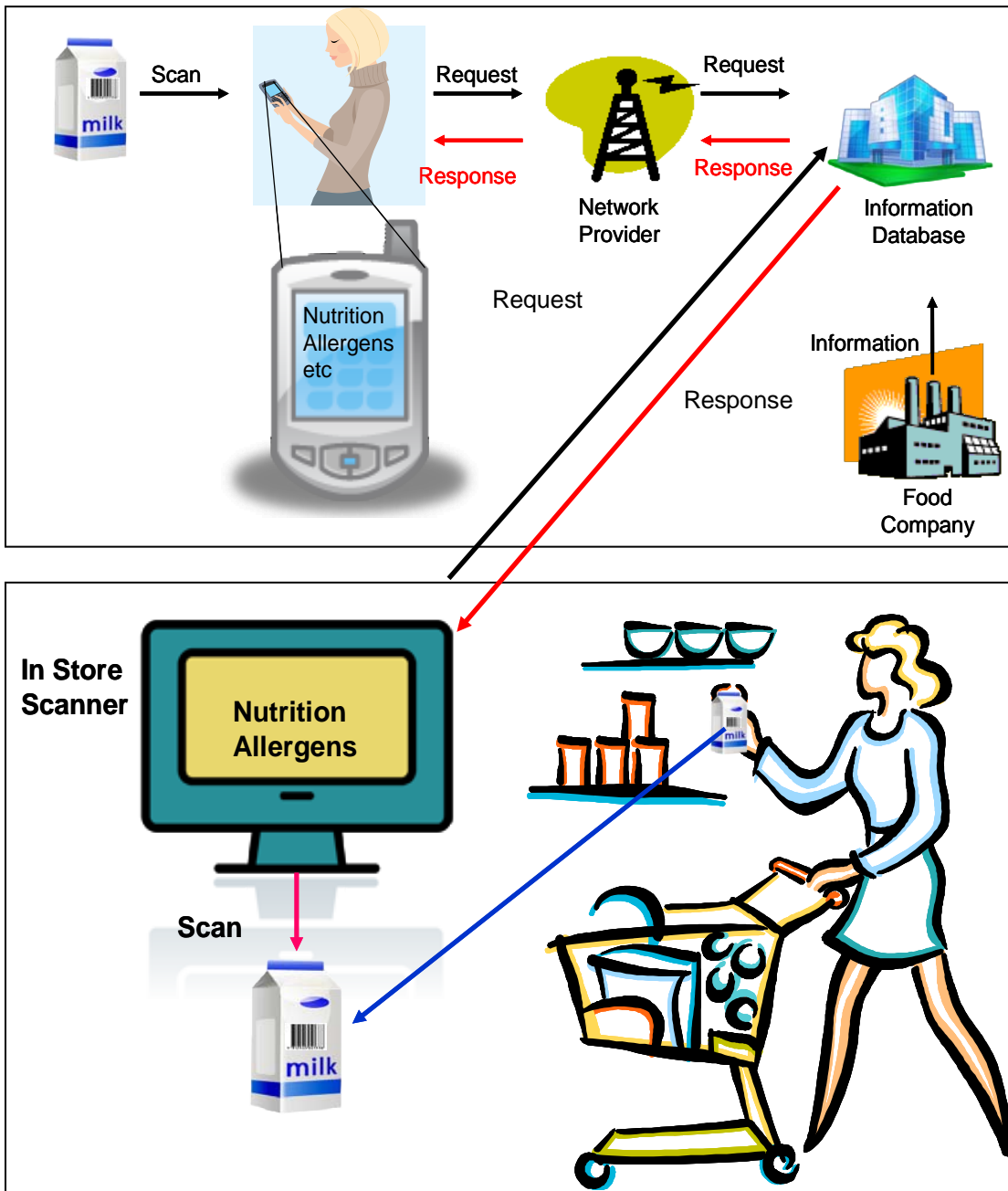


Figure . Extended Labelling – how it will work via mobile telephone technology, and in-store scanners.

### AFGC MEMBERS LIST AS AT 16 MARCH 2010

Arnett's Biscuits Limited  
The Kettle Chip Company Pty Ltd  
Asia-Pacific Blending Corporation P/L  
Barilla Australia Pty Ltd  
Beak & Johnston Pty Ltd  
BOC Gases Australia Limited  
Bronte Industries Pty Ltd  
Bulla Dairy Foods  
Bundaberg Brewed Drinks Pty Ltd  
Bundaberg Sugar Limited  
Cadbury Schweppes Asia Pacific  
Campbell's Soup Australia  
Cantarella Bros Pty Ltd  
Cerebos (Australia) Limited  
Christie Tea Pty Ltd  
Church & Dwight (Australia) Pty Ltd  
Clorox Australia Pty Ltd  
Coca-Cola Amatil (Aust) Limited  
    SPC Ardmoma Operations Limited  
Coca-Cola South Pacific Pty Ltd  
Colgate-Palmolive Pty Ltd  
Coopers Brewery Limited  
Dairy Farmers Group  
Danisco Australia Pty Ltd  
Devro Pty Ltd  
DSM Food Specialties Australia Pty Ltd  
    DSM Nutritional Products  
Earlee Products  
Ferrero Australia  
Fibrisol Services Australia Pty Ltd  
Fonterra Brands (Australia) Pty Ltd  
Foster's Group Limited  
Frucon Beverages (Australia)  
General Mills Australia Pty Ltd  
George Weston Foods Limited  
    AB Food and Beverages Australia  
    AB Mauri  
    Cereform/Serrol  
    Don  
    GWF Baking Division  
    George Weston Technologies  
    Jasol  
    Weston Cereal Industries  
GlaxoSmithKline Consumer Healthcare  
Golden Circle Limited  
Goodman Fielder Limited  
    Meadow Lea Australia  
    Quality Bakers Aust Pty Ltd  
H J Heinz Company Australia Limited  
Harvest FreshCuts Pty Ltd  
Hela Schwarz  
Hoyt Food Manufacturing Industries P/L  
Johnson & Johnson Pacific Pty Ltd  
    Pfizer Consumer Health  
Kellogg (Australia) Pty Ltd  
    Day Dawn Pty Ltd  
    Specialty Cereals Pty Ltd  
Kerry Ingredients Australia Pty Ltd  
Kikkoman  
Kimberly-Clark Australia Pty Ltd  
Kraft Foods Asia Pacific  
Lauke Flour Mills  
Lion Nathan Limited  
Madura Tea Estates  
Manildra Harwood Sugars  
Mars Australia  
    Mars Food  
    Mars Petcare  
    Mars Snackfood  
McCain Foods (Aust) Pty Ltd  
McCormick Foods Aust. Pty Ltd  
Merisant Manufacturing Aust. Pty Ltd  
National Foods Limited  
Nerada Tea Pty Ltd  
Nestlé Australia Limited  
    Nestlé Foods & Beverages  
    Nestlé Confectionery  
    Nestlé Ice Cream  
    Nestlé Nutrition  
    Foodservice & Industrial Division  
    Novartis Consumer Health Australasia  
Nutricia Australia Pty Ltd  
Ocean Spray International Inc  
Parmalat Australia Limited  
Patties Foods Pty Ltd  
Peanut Company of Aust. Limited  
Procter & Gamble Australia Pty Ltd  
    Gillette Australia  
PZ Cussons Australia Pty Ltd  
Queen Fine Foods Pty Ltd  
Reckitt Benckiser (Aust) Pty Ltd  
Ridley Corporation Limited  
    Cheetham Salt Limited  
Sanitarium Health Food Company  
Sara Lee Australia  
    Sara Lee Foodservice  
    Sara Lee Food and Beverage  
SCA Hygiene Australasia  
Sensient Technologies  
Simplot Australia Pty Ltd  
Spicemasters of Australia Pty Ltd  
Stuart Alexander & Co Pty Ltd  
Sugar Australia Pty Ltd  
SunRice  
Swift Australia Pty Ltd  
Tate & Lyle ANZ  
The Smith's Snackfood Co.  
The Wrigley Company  
Tixana Pty Ltd  
Unilever Australasia  
Wyeth Australia Pty Ltd  
Yakult Australia Pty Ltd  
  
Associate & \*Affiliate Members  
Accenture  
Australia Pork Limited  
Australian Dietetic Services  
ACI Operations Pty Ltd  
Amcors Fibre Packaging  
\*ASMI  
BRI Australia Pty Ltd  
CAS Systems of Australia  
CHEP Asia-Pacific  
Concurrent Activities  
CoreProcess (Australia) Pty Ltd  
Dairy Australia  
Exel (Aust) Logistics Pty Ltd  
Food Liaison Pty Ltd  
FoodLegal  
Food Science Australia  
Foodbank Australia Limited  
\*Go Grains Health & Nutrition Ltd  
IBM Business Cons Svcs  
innovations & solutions  
International Business Systems  
KPMG  
Leadership Solutions  
Legal Finesse  
Linfox Australia Pty Ltd  
Meat and Livestock Australia Limited  
Monsanto Australia Limited  
New Zealand Trade and Enterprise  
Sue Akeroyd & Associates  
Swisslog Australia Pty Ltd  
The Nielsen Company  
Touchstone Cons. Australia Pty Ltd  
Visy Pak  
Wiley & Co Pty Ltd  
  
PSF Members  
Amcors Fibre Packaging  
Bundaberg Brewed Drinks Pty Ltd  
Cadbury Schweppes Asia Pacific  
Coca-Cola Amatil (Aust) Limited  
Foster's Group Limited  
Golden Circle Limited  
Lion Nathan Limited  
Owens Illinois  
Visy Pak



# Australian Food and Grocery Council

Level 2, Salvation Army House  
2-4 Brisbane Avenue  
Barton ACT 2600

Locked Bag 1  
Kingston ACT 2604

T: (02) 6273 1466  
F: (02) 6273 1477  
[afgc@afgc.org.au](mailto:afgc@afgc.org.au)  
[www.afgc.org.au](http://www.afgc.org.au)