

# Australian Food and Grocery Council

# POSITION STATEMENT

JULY 2011

**RESPONSE TO:**  
**LABELLING LOGIC: REVIEW OF FOOD LABELLING LAW  
AND POLICY (2011)**



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

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 full list of members is included in Appendix 6).

AFGC's aim is for the Australian food, beverage and grocery manufacturing industry to be world-class, sustainable, socially-responsible and competing profitably domestically and overseas.

With an annual turnover of \$102 billion (Figure 1), 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, four times larger than the automotive parts sector – the food and grocery manufacturing industry is a vital contributor to the wealth and health of our nation. 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.

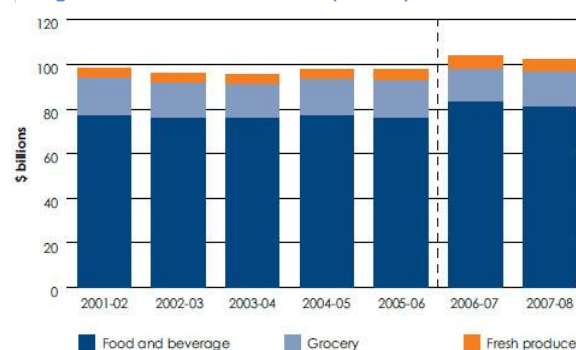
The industry's products are in more than 24 million meals, consumed by 22 million Australians every day, every week and every year. The food and grocery manufacturing sector employs more than 288,000 people representing about 3 per cent of all employed people in Australia paying around \$13 billion a year in salaries and wages.

The growing and sustainable industry is made up of 38,000 businesses and accounts for \$44 billion of the nation's international trade. The industry's total sales and service income in 2007-08 was \$102 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.

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.

Figure 1. Industries turnover (2007-8)



Source: ABS, catalogue number 8221.0 and 8159.0<sup>6</sup>

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

<sup>2</sup> AFGC and KMPG. *State of the Industry 2010*. Essential information: facts and figures. Australian Food and Grocery Council. Oct 2010.

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

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## 1. EXECUTIVE SUMMARY

Food labelling regulation has been a contentious area in public policy for many years. The Australia Food and Grocery Council (AFGC) advocated strongly for an overarching food labelling policy to resolve many of the ongoing labelling issues such as front-of-pack and country of origin.

AFGC welcomed the Review of Food Labelling Law and Policy commissioned by the Council of Australian Governments (COAG) as part of the Government's business regulatory reform agenda. The review represented a rare opportunity to establish a strong policy framework for food labelling leading to better outcomes for consumers, less cost for business and reduced enforcement requirements on government.

The *Labelling Logic: Review of Food Labelling Law and Policy (2011)* report ("the Review") addressed comprehensively the many contentious, high profile issues which have been challenging food labelling policy makers and has succeeded in recommending workable outcomes for some critical issues.

**AFGC is disappointed, however, that the Review has failed to identify or recommend regulatory reforms which will streamline food labelling regulatory approaches; and it has failed to identify and clarify the drivers and constraints on food labelling to inform the development of food labelling policy.** In this respect it has failed its primary mandate of advancing the COAG regulatory reform agenda. Moreover, AFGC is very concerned that the Review has chosen to deviate from the Terms of Reference in making recommendations for specific regulated food labelling changes which Government cannot readily accept due to the constraints imposed by agreements between the Commonwealth, States and Territories on regulatory policy. Those agreements rightly require food standards, including those related to labelling, to be developed with full stakeholder consultation and be justified through Regulatory Impact Statements within Food Standards Australia New Zealand (FSANZ) processes.

**Of further concern are the technical errors within the Review. The errors compromise a number of the recommendations, which again will impede Government's ability to respond positively to them.**

Notwithstanding these problems, AFGC supports some of the recommendations of the Review and looks forward to working with Government to identify reforms in labelling policy and regulation which will reduce the regulatory burden for industry, make labelling more accessible and clearer for consumers, ease enforcement costs for regulators, and [hopefully] will consign many food labelling controversies to history.

### ***Broad Areas of Agreement with the Review***

AFGC supports the Review's classification of food labelling issues (food safety, preventive health, new technologies and consumer values). This classification provides a sensible framework for identifying which legislation is most appropriate for dealing with specific issues such as country of origin labelling which the Review recommended is best dealt within the Consumer and Competition Protection Act (2010) rather than the Australia New Zealand Food Standards Code.

AFGC also supports the risk assessment matrix for determining appropriate regulatory responses depending on the nature of the issue – from black letter law through to the use of voluntary industry codes. This is highly consistent with the well established principles of *proportionate regulatory response*. The AFGC welcomes the Review's specific recommendations which recognise the appropriateness, and value, of voluntary industry codes in guiding the labelling practices of industry in some areas.

**AFGC also supports the development of a “nutrition policy” and sees this as part of the Government’s policy initiatives – namely, the National Food Plan and the Food Processing Industry Strategy.**

AFGC agrees that additional labelling of alcoholic beverages, particularly advising against alcohol consumption during pregnancy is warranted. Additional nutrition labelling for some products may also be warranted, if only to provide consistency in labelling approaches. These would be most sensibly resolved through FSANZ processes for amendment of the Food Standards Code.

### ***Broad Areas of Disagreement with the Review***

AFGC opposes the Review’s views on the potential role of food labelling regulation to be extended beyond food safety issues into the realms of preventive health to mitigate diet-related chronic preventable disease. AFGC would not support label statements which tie specific food products to broad dietary advice being mandated. This would be contrary to the fundamental nutritional wisdom that diets are linked to health outcomes, not foods.

Moreover, AFGC opposes many of the regulatory measures proposed based on the Review:

- **failing to recognise that food labels regulate food processing, food composition and information about food and as such are ill-suited to regulating for consumer behaviour change.** AFGC adamantly opposes, and takes exception, to the Review justifying food regulatory proposals based on experiences with regulation of tobacco;
- **failing to reflect that through initiatives of the food industry over the last 15 years dietary levels of *trans*-fat had been reduced** to well below recommended levels negating the need for specific *trans*-fat labelling on a public health basis;
- **failing to comprehensively review scientific literature to support recommendations, but rather selectively citing both peer-reviewed and grey literature.** AFGC is particularly concerned that the Review’s recommendations supporting the ‘traffic light’ format of front-of-pack labelling were based on limited scientific evidence ignoring a large body of work; The ‘implement and evaluate’ approach espoused by the Review cannot be justified and is a clear departure from well-established best practice in regulatory assessment.
- **failing to acknowledge the existence of industry labelling schemes which have a demonstrated track record of support.** The AFGC’s Daily Intake Guide deserves more than being summarily dismissed as not representing all food when most major brands, in all categories, use the scheme; and
- **failing to recognise the willingness of the food industry to market foods formulated to promote and protect good health** by supporting the current regulatory approach to health claims which relies upon FSANZ’s scientifically flawed Nutrient Profiling Scoring Criteria system. Rather than promoting innovation in new food products designed to assist consumers construct healthy diets, the system threatens to stifle innovation and render illegal claims currently made by food companies, with no justification.

**AFGC calls upon Government to support the industry in this critical area of nutrition and health claims by**

- **acknowledging the success of AFGC’s Daily Intake Guide front-of-pack labelling scheme; and**

- **supporting a health claims system which encourages the development of new products and their responsible marketing within an enabling regulatory framework where voluntary codes support mandatory requirements.**

AFGC also opposes proposals to change approaches to the labelling of genetically modified food and new technologies. AFGC considers the recommendation that “new technologies” be labelled for 30 years to aid identification of adverse health effects to be fundamentally flawed. It sends the message to consumers and industry alike that regulators cannot decide if a food is safe or unsafe. Industry will not commercialise new technologies under such a cloud of regulatory uncertainty. That the Review proposed this reveals a fundamental misunderstanding that the labelling of new technology is not, and should not be, a safety measure.

**AFGC opposes a further number of recommendations of the Review where they are:**

- **based on technically flawed arguments**, or with limited scientific evidence in support (e.g. the proposals for requiring specific labelling of vegetable oil and sugar types to provide nutrition information, when this is already provided in the nutrition information panel);
- **redundant, proposing measures already covered in the Food Standards Code**, or well functioning industry codes, or other policy approaches addressing the issue (e.g. the proposal for clearer allergen labelling when an industry code is already in place and utilised by a majority of the industry);
- **inconsistent with established regulatory policy** for outcomes based, rather than prescriptive, regulation (e.g. the proposals for a minimum font size for label statements when the current food standards require labels to be legible); or
- **impractical or costly to implement** with no obvious benefit to consumers or industry (e.g. the proposals for extensive nutrition labelling on vending machines, when the products themselves carry the same nutrition information).

### ***Costs of Implementation***

Labelling changes are costly for food companies, even when they are relatively minor. Some label change costs are ‘one off’, other costs are ongoing. It is not possible to precisely predict the cost of the Review recommendations if all were implemented. **AFGC has, however, conservatively estimated labelling costs associated with the Review to be \$150-\$450 million for the ‘one off’ label changes alone.** With such large costs foreshadowed, the onus is upon Government to conduct a comprehensive Regulatory Impact Statement investigation for each label change to ensure any new mandatory labelling standard is fully justified.

Whilst the Review did not provide clear foundations for future labelling regulatory policy AFGC is keen that all prominent controversies within the food labelling debate are brought to a conclusion. It is now incumbent upon Australian Governments to set clear labelling policy directions affirming their commitment to a regulatory reform agenda and a national uniform approach to standards setting through the evidence-based, risk/benefit analysis procedures of FSANZ.

A clear statement of the policy framework for food labelling is required detailing the role of food labelling regulation, the focus of individual relevant legislation and the fit within the many policy options available to Government.

AFGC looks forward to liaising closely with Government to achieve these outcomes for the benefit of consumers, regulators and the food industry.

## 2. RECOMMENDATIONS

AFGC recommends that:

1. The Government respond to the Review in a manner consistent with the Council of Australian Governments business regulation reform agenda and the objective of reducing regulatory costs on business.
2. The Government consider only those recommendations of the Review which fall within the Terms of Reference of the Review.
3. The Government confirm its commitment that the COAG principles of best regulatory practice apply to food regulation policy and law.
4. The Government confirm its commitment to the current processes for the development of food labelling standards as administered by Food Standards Australia New Zealand.
5. The Government support the use of industry codes as part of a range of measures to regulate foods labels based on sound risk analysis and proportionate response.
6. Development of food labelling regulatory policy supports the appropriate use of industry voluntary codes as adjuncts to full regulatory measures.
7. Changes are made to current Country of Origin Labelling regulatory arrangements which:
  - move all responsibility for Country of Origin labelling to the Competition and Consumer Act (2010) and the Australian Consumer and Competition Commission; and
  - include provision for “*made in ...*” claims which provide flexibility for industry to usefully inform consumers of the origins of food products and their components and appropriately those products which are manufactured in Australia, from imported products.
8. Any definition of Public Health to be incorporated in the FSANZ Act 1991 include the concepts that public health, for the purpose of foods standards development, is the organised response by society to protect and promote health, and to prevent illness, injury and disability, associated with the consumption of food based on scientific evidence related to physiological outcomes, risk-based assessment of consequences, technical practicalities of implementation and overall cost-benefit analysis.
9. Australian Governments re-commit to the concept of national uniform food regulations through, in the first instance, directing State and Territory bureaucracies to pursue national uniform menu board labelling regulation through the Australia New Zealand Food Standards Code.
10. The Government seek the advice of appropriate experts in the grain handling industry, or elsewhere in the food sector on how feasible it would be to test food products for the unintentional presence of genetically modified material as suggested by the Review, and the likely benefit, or insights, that testing would provide in assisting compliance assessment with label requirements.
11. The current labelling provisions for foods derived from gene technology within the Australia New Zealand Food Standards Code be retained without amendment.



12. Labelling requirements for approved nanotechnologies be considered on a case-by-case basis with options for both mandatory requirements and the use of industry codes as appropriate.
13. The current food regulatory policy seeking outcomes based rather than prescriptive food standards be reaffirmed in the Government's response to the Review.
14. The Government reject any regulation which favours any particular form front-of-pack labelling unless there is strong scientific evidence demonstrating its particular effectiveness over other labelling approaches in influencing consumers to construct healthier diets.
15. The Commonwealth, State and Territories work in partnership to promote the AFGC's Daily Intake Guide front-of-pack labelling scheme to enhance its effectiveness in assisting consumers construct healthy diets.
16. The future regulatory system for nutrition labelling and nutrition, health and related claims comprise a combination of mandatory requirements and industry voluntary codes based on the concept of proportionate regulatory responses and scientific evidence-based risk analysis with:
  - a voluntary code guiding the use of credence claims and nutrition content claims;
  - a voluntary code guiding the use of general level health claims, with a list of agreed claims based on scientific substantiation; and
  - the food standards code permitting higher level health claims based on pre-approval and scientific substantiation.
17. The Government reject any proposals for mandatory *trans*-fat labelling unless they are developed through the normal FSANZ processes leading to amendment of the Food Standards Code.
18. The Government pass over those Review recommendations which are clearly based on factual errors, technical flaws, or misunderstanding of the agreed processes for food policy and regulation setting.
19. In the case of alcoholic beverages:
  - the Government support the use of voluntary statements on alcoholic beverages advising responsible alcohol consumption and assist the industry to monitor the effectiveness of those labels in influencing consumer behaviour prior to the introduction of mandatory labelling requirements; and
  - any mandatory label changes, including for nutrition labelling, only be introduced following development of a complete case by FSANZ, including a robust Regulatory Impact Statement, and complements any voluntary label statements being made by companies.
20. That prior to any policy announcement made in response to the Review the Government confirms comprehensive Regulatory Impact Statements will be an indispensable pre-requisite for mandatory labelling requirements originating from the Review.



### 3. INTRODUCTION

Food labelling is the most prominent, and indeed the most contentious, of food policy and regulatory issues. Media attention on food labelling issues is common with views often polarised between those calling for more extensive labelling and others critical of excessive information on food labels. Caught between these extremes are food industry which strives to inform consumers about its products, and persuade them to consider purchase, regulators charged with ensuring consumers receive all necessary information about food, and consumers themselves whose confidence in the adequacy of food labelling may be undermined by the never-ending controversies.

Against this backdrop, the Australian Food and Grocery Council (AFGC) has been a strong and leading advocate for reform of food labelling policy and regulation for many years. AFGC welcomed the comprehensive *Review of Food Labelling Law and Policy* conducted during 2009 and 2010 and contributed two submissions and took part in a number of the public consultations.

*Labelling Logic: Review of Food Labelling Law and Policy (2011)* report (“the Review”) has echoed many of the AFGC’s concerns regarding food labelling. Indeed it has addressed comprehensively the many controversial, high profile issues which have been challenging food labelling policy makers such as genetically modified foods, front-of-pack labelling, country of origin labelling, and nutrition and health and related claims. The Review noted the complexity of these issues, the diversity of opinion surrounding them, and the difficulty in satisfying the expectations of all stakeholders with potential labelling approaches. Notwithstanding the difficulties, **the Review has succeeded in recommending workable outcomes for some critical issues** (see later).

**It is also the case, however, that the Review has not succeeded in establishing a firm foundation or conceptual framework on which a comprehensive food labelling regulatory policy can be built.** There are gaps in the Review, which must still be addressed, particularly in the context of regulatory reform targeted at streamlining food labelling regulation.

AFGC looks forward to continuing to work with policy makers and stakeholders in securing some positive new approaches to food labelling in response to the Review.

#### 3.1. Background to the Review

The current food regulatory system has been operating since 2001 following the gazettal of the *Australia New Zealand Food Standards Code* (FSC) and the creation of Food Standards Australia New Zealand (FSANZ; formerly the Australia New Zealand Food Authority). New institutional arrangements also commenced with the convening of the Food Regulation Standing Committee and the Implementation Sub-Committee. A fundamental reform promised, but only partly delivered, when the new arrangements commenced was that **policy would drive food regulation**.

Despite its ten years of operation, the full scope of food regulations comprising food processing and preparation, food composition and food labelling is only partially covered by a considered policy framework. **More specifically a comprehensive food labelling policy has been lacking.**

The absence of an overarching food labelling policy to guide important food labelling matters such as health claims, front-of-pack labelling, gene technology labelling and country of origin labelling has encouraged many parties to propose food labelling regulations aimed at addressing health, social or environmental issues some of which are only tenuously related to food or food consumption. The result has been an *ad hoc* approach to food labelling standards promulgation with many issues becoming mired in [on occasions political] controversy. **The controversies have diminished consumer confidence in the abilities of food industry and food regulatory system to ensure the provision of appropriately labelled, safe food.**

In addition the lack of a comprehensive policy covering food labelling development and agreed enforcement has imposed an unnecessary cost burden on industry.

When the *Review of Food Labelling Policy and Law* was announced by the Council of Australian Governments (COAG) and the Australia New Zealand Food Regulation Ministerial Council (ANZMFRC) **AFGC had great hopes that it would result in the principles for sound overarching policy on food labelling being established** leading to two main outcomes viz:

1. a streamlining of the development of food labelling regulations within clear policy principles resulting in a reduced regulatory burden on the food industry; and
2. more certainty for consumers and other stakeholders regarding what regulations can, and cannot, reasonably require from food labelling.

**Unfortunately, the Review has delivered neither of these outcomes.** It has failed to identify or recommend regulatory reforms which will streamline food labelling regulatory approaches; and it has failed to identify and clarify the drivers and constraints on food labelling to inform the development of food labelling policy.

Notwithstanding this, AFGC has identified some elements within the Review which are supportable and can provide the basis for better food labelling in some areas.

### 3.2. This Position Statement

This Position Statement is a comprehensive response to the Review. It critically examines the Review's assumptions, methodology and recommendations against:

- COAG's business regulatory reform agenda and the objective of reduced regulatory burden on industry;
- the Review's Terms of Reference which gave guidance to matters the Review should address;
- COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Commonwealth of Australia. 2004.* This describes fundamental principles, agreed by the Commonwealth, States and Territories for justifying the use of regulatory measures;
- current agreed processes for developing and amending the FSC;
- current scientific wisdom; and importantly
- matters of practicality which will need to be considered by industry and government associated with the recommendations.

AFGC has identified a number of errors of fact and logic associated with some of the Recommendations and/or the text used to introduce them. This has undermined the confidence AFGC has in the Review to provide a solid footing for future development of food labelling policy and law Australia. Specific details of AFGC's concerns are provided later in this Position Statement.

Notwithstanding these concerns, this Position Statement has identified recommendations the AFGC can support, and recommendations AFGC may consider. In these cases the AFGC will engage further with Government and other stakeholders to progress implementation. AFGC will also engage with Government detailing concerns regarding recommendations it does not support.

## 4. COAG ORIGINS OF THE REVIEW

### 4.1. The Reform Agenda

COAG determined to conduct a comprehensive review of food labelling as part of its reform program under the *National Partnership to Deliver a Seamless National Economy*<sup>4</sup>. The regulatory reform involved two initiatives viz:

1. a broad initiative to promote best practice regulation making and review; and
2. reforms to reduce the regulatory burden with respect to particular cross-jurisdictional 'hot-spots', where overlapping and inconsistent regulatory regimes were impeding economic activity<sup>5</sup>.

AFGC acknowledges the reforms in the governance arrangements of the ANZFRMC which effectively removed the "power of veto" of any single jurisdiction for standard setting moving to a consensus majority approach and the moves to establish a central advice service within FSANZ.

The drivers for including food regulation on the agenda of Business Regulation and Competition Working Group came from recognition of the unnecessary costs the regulatory arrangements imposed on industry and the wider community. For example, the Victorian Competition and Efficiency Commission conservatively estimated savings of \$34.5 million p.a. in Victoria alone flowing on from proposed changes at reducing regulatory burden<sup>6</sup> whilst the Productivity Commission in reviewing food regulation concluded that:

*'food regulation can be made less burdensome by increasing national consistency of regulation and improving timeliness and transparency of decision making....'*<sup>7</sup>.

More recently the Commission found that:

*'differences in the nature of regulation, administrative and enforcement practices and fees and charges are likely to point to unnecessary burdens on business'*<sup>8</sup>.

Rather than reducing the regulatory burden on business **the Review has made 61 recommendations many of which would impose greater burdens on business**. Many will also impose greater burden on government. Specific concerns from the Review are recommendations for extensive, prescriptive and restrictive regulation around nutrition and health labelling which will impose costs immediately and restrict innovation in the longer term.

Moreover, **there is no clear policy reform within the Review which will assist the competitiveness of industry whilst still ensuring consumers receive adequate information for informed choice**.

#### Recommendation

**AFGC recommends the Government responds to the Review in a manner consistent with the Council of Australian Governments business regulation reform agenda and the objective of reducing regulatory costs on business.**

<sup>4</sup> <http://www.coagreformcouncil.gov.au/agenda/index.cfm>

<sup>5</sup> [http://www.coagreformcouncil.gov.au/reports/docs/COAG\\_reform\\_agenda\\_2010\\_appendixb.pdf](http://www.coagreformcouncil.gov.au/reports/docs/COAG_reform_agenda_2010_appendixb.pdf)

<sup>6</sup> Simplifying the Menu: Food Regulation in Victoria. Final Report September 2007. Victorian Competition and Efficiency Commission.

<sup>7</sup> Annual Review of Regulatory 'Burden on Business: Manufacturing and Distributive Trades. Productivity Commission. August 2008.

<sup>8</sup> Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety. Productivity Commission Draft Research Report. Productivity Commission. October 2009.

## 4.2. Terms of Reference

The Terms of Reference provided the Review with guidelines regarding what would be, and would not be, in scope of the Review. The fact that the Review was “independent” did not mean the Review Panel had free license to consider any matter relating to food labelling, or indeed food law and policy. Rather, their “independence” related to the individuals being “non-aligned” to any particular interests. The Terms of Reference for such independent reviews are to provide focus and discipline for the review panel.

AFGC considered the Terms of Reference were explicit and unequivocal. For example,

*.....all food labelling requirements impose costs. Therefore it is important that all food labelling laws:*

- I. are evidence-based and effective at achieving their policy purpose;*
- II. do not impose unjustifiable regulatory burdens on business; and*
- III. are capable of being enforced in an effective, proportionate and consistent manner.*

The “*Matters for the Review*” detailed in the Terms of Reference focus strongly on policy drivers impacting on food labelling. AFGC considers such policy drivers to include the:

- obligation for consumer protection particularly with regard to potential hazards in food,
- legitimate right of consumers to make an informed choice,
- need to ensure the food industry remains competitive and profitable as a fundamental prerequisite to responding to consumers needs; and
- value of meeting international agreements in recognition of the substantial import and export of food products.

The Review has deviated substantially from the *Terms of Reference* in some aspects. For example, detailed regulatory options have been recommended, when none were called for. Also the Review ignored providing advice on the concept of evidence-based policy, assessing the totality of the regulatory burden on industry and the need to avoid unnecessary costs, requirements for enforcement (other than recommending a new institutional arrangement), managing the interface between regulatory arrangements, and ensuring international treaty obligations are factored into regulatory arrangements.

Indeed, to the last point, the Review essentially ignored Australia’s obligations under World Trade Organization Agreements such as the Technical Barriers to Trade Agreement. AFGC sought from the Review clear statements supporting, or at least acknowledging the importance of integrating food labelling policy into the broader policy framework of domestic food regulations which are well established. Instead, the Review chose to describe policy drivers simplistically in terms of a tension between consumers and the food industry<sup>9</sup> with “trade facilitation” afforded a very minor role.

### Recommendation

**AFGC recommends the Government consider only those recommendations of the Review which fall within the Terms of Reference of the Review.**

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<sup>9</sup> see Figure 2, p38 in the Review.

### 4.3. Principles and Guidelines for National Standard Setting and Regulatory Action

Ultimately it is Australian Governments, through COAG, which have to consider and respond to the recommendations made in the Review. In this context, the Review should have considered the capacity of, and constraints on, Governments to respond. A rigorous “role of government” analysis that logically and thoughtfully examines each question addressed in the Review, and its potential benefits and impacts, is absent from the Review. This limits its usefulness.

It has long been recognised by successive Australian Governments at all levels that regulation is just one of many potential policy instruments. It has also been recognised that regulations impose costs on industry, government and ultimately the wider community. There must, therefore, be good justification for imposing regulation. Developing that justification is outlined below (Box 1). This provides a starting place for the robust and deep analysis required by the Australian Government as it considers its role supporting any particular labelling approach recommended by the Review.

#### **Box 1: Council of Australian Governments Principles of Best Practice Regulation<sup>10</sup>**

The Council of Australian Governments has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
  - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
  - b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

**These COAG principles for standards setting are an indispensable condition to sound labelling policy and law.** AFGC will oppose any suggestion that there are categories of food labelling which should somehow be exempt. AFGC is particularly concerned that the Review has suggested such exemptions are warranted in the pursuit of preventive health objectives, and rejects this notion (See Section 6.1).

#### **Recommendation**

**AFGC recommends that the Government confirm its commitment that the COAG principles of best regulatory practice apply to food regulation policy and law.**

<sup>10</sup> Reproduced from: Council of Australian Governments (2007). *Best practice regulation - a guide for Ministerial Councils and national standard setting bodies*. Canberra, p.4.

#### 4.4. Food Standards Development in Australia

The current processes (with some refinements) for developing and amending the FSC have been in existence for 20 years. They were developed to provide nationally consistent food regulations based on scientific evidence, shaped by stakeholder consultation and justified through robust Regulatory Impact Statements.

**That the Review made specific recommendations for mandatory labelling apparently without regard for the established processes of food standards development is of great concern to AFGC and is not supported.** Under agreements between the Commonwealth, States and Territories mandatory labelling can only be introduced following a strict process of assessment conducted by FSANZ. The assessment includes a full stakeholder consultation and preparation of a Regulatory Impact Statement.

Not only do recommendations which ignore this process go beyond the Terms of Reference of the Review, but they subvert the established processes for standards development. Most unfortunately, they raise the expectations of some in the community that particular labelling outcomes can be adopted readily, when in reality many hurdles to implementation may exist. This puts unnecessary pressure on Government as they seek to respond to recommendations which are simply beyond their capability to deliver through legislation developed within current, agreed regulatory processes. Furthermore, it results in industry being put into a bad light (again) for simply supporting well established processes of regulatory development.

#### Recommendation

**AFGC recommends the Government confirm its commitment to the current processes for the development of food labelling standards as administered by Food Standards Australia New Zealand.**

#### 4.5. The Review and Recommendations

AFGC has provided responses to each recommendation in the Review ([Appendix 1](#)). A number of issues within the Review, however, are linked and discussed together to provide a more comprehensive consideration. Broadly, AFGC has considered the recommendations against the following criteria:

1. **procedure** – do the recommendations align reasonably with current procedures required to develop and implement policy and regulations;
2. **policy** – do the recommendations align well with current policies and therefore likely to be supported and implemented;
3. **quality** – is reasonable fact-based evidence presented to support the recommendations; and
4. **technical soundness** – are the recommendations practical to implement either by government or industry.

Of course procedures and policies (1 and 2) can be changed in response to the recommendations, but not without 3 and 4 also being satisfied.



## 5. RECOMMENDATIONS THE AFGC SUPPORTS

AFGC supports a large number of the recommendations made by the Review either fully, or conditionally.

Recommendations which reflect the utility of industry codes and co-regulatory codes as part of best practice regulation and the concept of proportionate regulatory response are strongly supported – in particular Recommendation 38, but also others which reflect the possible use of industry codes or voluntary approaches (e.g. Recommendations 2, 15, 21, 37, 39).

Recommendations which call for more resourcing, better monitoring of food labelling regulations, measures to make labels more effective or to review their effectiveness are generally supported (e.g. Recommendations 3, 6, 7, 23, 34, 39, 56, 59 and 60).

AFGC will consider supporting other recommendations subject to whether COAG ultimately wishes to pursue the recommendations as part of their business regulatory reform agenda.

More detailed comment on the recommendations are provided in following parts of this Position Statement.

### 5.1. Risk Assessment Hierarchical Framework

AFGC supports the proposed hierarchal approach to food labelling issues based on risk assessment and the use of a range of regulatory approaches from full regulation through to industry codes (Recommendation 2). The proposal, however, merely restates principles which are well embedded in approaches within government regulatory agencies (although not at all times necessarily adhered to). FSANZ uses risk analysis approaches, including detailed risk assessments, to determine the necessity for food standards<sup>11</sup>. The Australian Consumer and Competition Commission (ACCC) details extensively the concept of regulatory responses being proportionate to the level of risk to be addressed<sup>12</sup>.

Notwithstanding this the Review has made a valuable contribution in identifying that labelling issues are broadly classified into two types. Those:

1. concerning food as a consumed product and its potential physiological, nutritional, pharmacological, and indeed toxicological effects; and
2. relating to its origins and methods of production.

The former is best regulated through a dedicated regulatory regime such as the FSC; the latter is best regulated through alternative legislation such as the ACCC's Competition and Consumer Act 2011. Both can be augmented with appropriate industry codes as has been noted by the Review.

#### Recommendation

**AFGC recommends the Government support the use of industry codes as part of a range of measures to regulate foods labels based on sound risk analysis and proportionate response.**

<sup>11</sup><http://www.foodstandards.gov.au/scienceandeducation/publications/annualreport/annualreport20092010/peopleandorganisationalcapability10/organisationalstruct4938.cfm>

<sup>12</sup><http://www.accc.gov.au/content/index.phtml/itemId/658186>

AFGC has concerns, however, that the proposed framework is not consistently used as a basis for the more detailed recommendations later in the review. For example, the treatment of New Technologies (i.e. gene technology, nano-technology etc.) although considered to be at the lower end of the scale of “risk” still attract mandatory, and prescriptive labelling recommendations.

## 5.2. Use of Industry Codes

AFGC strongly supports the use of industry voluntary codes as effective regulatory measures. Consistent with this AFGC has launched two major industry codes in recent years. These are the AFGC’s Responsible Children’s Marketing Initiative (RCMI) which moderates the marketing to children of high fat, high salt, high sugar foods and the Code of Practice for Food Labelling and Promotion (“labelling Code”). The latter incorporates the Daily Intake Guide (DIG) front-of-pack labelling system, date marking and allergen labelling. The labelling Code will be expanded to include nutrition and health claims, and premium claims in coming years.

In accordance with ACCC guidelines<sup>12</sup> on the characteristics of successful industry codes, the RCMI and labelling Code are well resourced by an industry association (i.e. AFGC), have strong management systems, transparent processes, independent complaint arbitration, stakeholder engagement, ongoing performance monitoring, and frequent reporting<sup>13</sup>.

Both the RCMI and labelling Code have successfully moderated industry activity<sup>13</sup> demonstrating the effectiveness of the industry codes.

### Recommendation

**AFGC recommends that development of food labelling regulatory policy supports the appropriate use of industry voluntary codes as adjuncts to full regulatory measures.**

## 5.3. Salt vs. Sodium

AFGC agrees that there appears to be incongruence between mandatory labelling requirements for sodium, and public health education advising consumers to limit their salt intake. The salt *versus* sodium declaration was debated extensively prior to the introduction of mandatory Nutrition Information Panels (NIP) in 2001. Sodium was preferred as:

- 1) sodium rather than salt, is a risk associated nutrient and it is a more precise term;
- 2) sodium is derived from more food additives than simply “salt”;
- 3) enforcement is more practical as sodium can be measured directly; and
- 4) if “salt” appeared on the label, consumers may interpret it as “added salt” even when the food only contained naturally occurring sodium. This may then discourage the consumption of these foods based on “salt” being on the NIP.

AFGC supports the Review’s *Recommendation 16*

*That social research be undertaken to determine effective mechanisms to present sodium/salt information on food labels to facilitate consumers’ understanding and use of this information.*

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<sup>13</sup> <http://www.afgc.org.au/industry-codes.html>

AFGC looks forward to contributing the food industry's perspective on this issue, should the Government commission the research and subsequently propose amendments to the FSC.

AFGC makes the point, however, that if the case is established that consumers do not understand the term "sodium" on NIPs it is incumbent upon Government to educate consumers. The Government made a commitment to inform consumers on how to use the information in the NIP when they became a mandatory requirement with the introduction of the current FSC.

#### 5.4. Country of Origin Labelling

AFGC agrees with the Review's conclusions that Country of Origin labelling regulations in Australia should be reformed. In this context the AFGC supports Recommendations 40 and 41.

**Recommendation 42 is not supported.**

AFGC's full position on Country of Origin labelling was recently published in an AFGC White Paper (see Appendix 4).

In brief, the AFGC agrees with the Review that the regulation of Country of Origin labelling be the sole responsibility of the ACCC, rather than being a joint responsibility between FSANZ and the ACCC. **AFGC does not support the proposed labelling approach which the Review has recommended (Recommendation 42) whereby a:**

*"food-specific country of origin labelling framework, based primarily on the ingoing weight of the ingredients, and components (excluding water) be developed"*

Rather, AFGC proposes maintaining the current "Product of Australia" claim as is, and modifying the criteria for the "Made in Australia" viz:

'Made in...' means that at least 50 percent of the product costs relevant to the manufacturing of the food are incurred in the specified country, and should include a qualifying statement concerning the origin of the ingredients to improve the clarity and understanding for consumers.

'Made in...' should be determined by the costs directly attributed to the manufacture of the food in the specified country and should not take into account those indirect costs associated with the day-to-day running of a business.

The qualifying origin statement for local/imported ingredients, with particular reference to the origin of characterising ingredients or components, should be provided in association with the 'Made in...' statement should be used in the following manner:

- *Made in Australia with Australian ingredients;*
- *Made in Australia with Australian and imported ingredients;*
- *Made in Australia with imported and Australian ingredients; and*
- *Made in Australia with imported ingredients.*

These should be the minimum regulatory requirements. Companies may provide more specific information as to the nature and origin of the food as appropriate.

### Recommendation

**AFGC recommends changes to current Country of Origin Labelling regulatory arrangements which:**

- **move all responsibility for Country of Origin labelling to the Competition and Consumer Act (2010) and the Australian Consumer and Competition Commission; and**
- **include provision for “*made in ...*” claims which provide flexibility for industry to usefully inform consumers of the origins of food products and their components and appropriately those products which are manufactured in Australia, from imported products.**

## 6. RECOMMENDATIONS OF CONCERN TO AFGC

AFGC only partly supports, or does not support at all a number of the Review’s recommendations across a number of topics. These are grouped together in the following discussion for clarity of argument.

### 6.1. Public Health, Nutrition Policy, Food Safety and Preventive Health

There is continuing public policy debate about the use of regulation as a policy instrument in public preventive health. Recommendations 1, 9, 10, 19 and 22 refer to aspects of public health, nutrition policy and preventive health strategies.

#### Public Health

AFGC concurs broadly with the view that regulation, including labelling regulation should align with public health goals subject to appropriate definitions being developed and adequate justification<sup>10</sup> for the regulation being presented.

AFGC supports developing a definition of ‘public health’ within the *Food Standards Australia New Zealand Act 1991* (Recommendation 1). AFGC considers, however, that the definition proposed is too broad and not reflective of fundamental purpose of the FSC which is to regulate food – as a consumed (i.e. eaten) product. AFGC considers the definition should be refined along the lines:

*Public health, for the purpose of food standard development, is the organised response by society to protect and promote health, and to prevent illness, injury and disability, associated with the consumption of food based on scientific evidence related to physiological outcomes, risk-based assessment of consequences, technical practicalities of implementation and overall cost-benefit analysis.*

This definition constrains the scope of regulations which might be included in the FSC and that is its purpose. “Public health” is very broad in scope, whereas food regulations should be limited to food composition, food labelling and food production processes.

### Recommendation

**AFGC recommends any definition of Public Health to be incorporated in the FSANZ Act 1991 include the concepts that public health, for the purpose of foods standards development, is the organised response by society to protect and promote health, and to prevent illness, injury and disability, associated with the consumption of food based on scientific evidence related to physiological outcomes, risk-based assessment of consequences, technical practicalities of implementation and overall cost-benefit analysis.**

## Nutrition Policy

**AFGC supports the development of a national nutrition policy (Recommendation 9).** As such it should be part of the *National Food Plan* currently being developed by the Department of Agriculture Fisheries and Forestry (DAFF), as well as the *Food Processing Industry Strategy* being developed by the Department of, Innovation, Industry, Science and Research (DIISR). It should also be a part of broader public preventive health strategies developed by Department of Health and Ageing (DOHA). The simple rationale behind this cross-portfolio approach is that a comprehensive nutrition policy should consider not only the diets that different sectors of the population should be consuming to optimise health, but also the types foods, and the characteristics of the food supply required to deliver those diets. Importantly it needs also to recognise the role of the food industry in ensuring the food supply reflects advances in nutritional science and is responsive to the key nutrition and health issues of the day.

**AFGC does not consider nutrition policy should be referred to in the *FSANZ Act 1991*** (Recommendation 10). The FSANZ Act 1991 objectives already refer to public health which (even without being defined) encompasses nutrition. It is would be redundant to make further reference to nutrition policy in the Act.

**AFGC supports the concept that food regulation should be consistent with public [relevant] health goals** (Recommendation 20) which would be identified within a *National Food Plan*, and specific nutrition policy goals.

**AFGC also supports conditionally mandatory label statements supporting preventive health strategies** (Recommendation 22) – particularly when there is a food safety issue. AFGC would not support label statements which tie specific food products to broad dietary advice being mandated by government as this would be contrary to the fundamental nutritional wisdom that diets are linked to health outcomes, not foods.

## Food Safety vs Preventive Health

AFGC considers there are some fundamental differences between food safety issues, and diet - related health problems which makes the latter ill suited to be addressed by regulation. The differences are highlighted in the Table 1. In essence food safety issues stem from food borne hazards which are clearly identifiable and measurable and have well described detrimental effects on health at defined levels. Therefore a firm basis for determining whether a food is or is not safe can be established, and prescribed in regulation. This is not the case for risk-associated nutrients. Not only have safe, or unsafe levels, of these nutrients in foods not been described, it is considered scientific nonsense to do so. It is the levels of nutrients in diets which are associated with health risk, and moreover the level of risk is moderated by non-food factors such as physical activity.



**Table 1 – Comparison between of the distinguishing characteristic of food safety and preventive health**

Food Safety	Preventive Health
Most in population are affected (not all)	Many in population are unaffected
Acute health problems (mainly)	Chronic health problems
Single agents of harm (chemical, physical, microbial)	Multi-factorial aetiology (genotype, nutrition, physical activity, smoking etc.)
Few interactions between agents and environment factors	Strong interaction between agents, environment, behaviour (e.g. lifestyle)
Consumption can be linked directly to health outcomes	Consumption is often difficult to link to health outcomes.
Strong evidence base at <b>food</b> level	Strong evidence base at <b>diet</b> level
Unsafe levels can be defined in <b>foods</b>	Difficult to define unsafe levels in foods, but can in <b>diets</b>
<b>Food</b> Based – which can be regulated	<b>Diet</b> based – more difficult to regulate

Diets, by definition, are determined by the consumer. Influencing consumer behaviour becomes paramount in securing better population level health outcomes.

The effectiveness of food labels, particularly for securing better dietary habits from consumers and therefore better health outcomes, has still to be conclusively demonstrated. In fact the Review states (para 4.63):

*“..... there is little evidence that label messages are effective in isolation and it is unfair to burden industry alone with tasks relating to problems that are society wide.....”*

Despite the obvious difficulties of regulating food labels to secure preventive health objectives, the Review pursues its case for labelling to the point of disregarding Regulatory Impact Statements (para 4.18):

*“The regulatory requirement for evidence of significant health or behavioural impact and economic assessments for individual food standards (i.e. Regulatory Impact Statements) can act as a barrier to utilising the food label as one component of multi-strategy approaches to tackling public health issues.”*

This is an assertion with no citation provided. Furthermore it is used to support

*“Recommendation 10*

*That the Food Standards Australia New Zealand Act 1991 be amended to require Food Standards Australia New Zealand to “have regard” to the comprehensive Nutrition Policy when developing or reviewing labelling standards.”*



**AFGC does not support this recommendation (see above) if it is to be a mechanism for avoiding Regulatory Impact Statements.**

The Review examines in some detail the potential role of food labelling regulation in preventive health. In doing so it notes that there is consensus that mandatory labelling related to immediate food safety is appropriate (para 3.13), and AFGC concurs with this view. The Review notes further consensus that labelling should provide (para 3.15):

*“...basic information required to facilitate healthy food choices (e.g. ingredients, nutrient levels)...”*

AFGC also concurs with this view, and further points the Review makes (para 3.16):

*“Mandatory health advice by governments and voluntary health claims by industry should only be considered if the epidemiological evidence is of such a high order as to substantiate general level health advice...”*

AFGC has serious concerns, however, with statements immediately following (para 3.17) viz:

*“...the principles of best regulatory practice are unlikely to provide clear justification for mandatory labelling with reference to chronic diseases. ..Such uncertainty should not prevent action. ....”*

**Again, the Review is suggesting best regulatory practice should be discarded as means of developing a case for regulation.**

The Review justifies these contradictory statements by citing the anti-smoking strategies, including regulation, claiming, but without providing evidence, that they would not have been successful if the principles of best regulatory practice had been adhered to.

**AFGC rejects outright any suggestion that tobacco as a product, or smoking as a health risk, bear any resemblance at all to food products, or their consumption patterns, which can meaningfully guide regulatory initiatives.** Simply, AFGC considers the analogy, and inferences, to be entirely inappropriate as:

- tobacco is essentially a single product linked strongly to very poor health outcomes, whereas food is a multitude of products (and nutrients) with much weaker links to poor health outcomes, and many links to positive health outcomes;
- biochemical and epidemiological evidence very strongly links tobacco smoking with health outcomes; whereas the evidence is absent or weak with regard to over consumption of particular foods or nutrients and poor health outcomes;
- tobacco has no benefits at all associated with its use and is never considered an integral part of healthy lifestyles, whereas all foods contain nutrients which can be integrated into healthy diets and lifestyles;
- total abstinence is advised for tobacco, whereas moderation, variety and balance is advised for food; and
- passive smoking is also harmful (and so addressed by regulation), whereas ill health from “passive eating” has not been demonstrated.

**This comparison alone calls into serious question basing any nutrition preventive health initiative on those used to address tobacco.** And it is certainly no justification for abandoning

the principle of best regulatory practice when considering mandatory food labelling, and concomitant cost imposed upon the food industry.

AFGC notes its views on this matter are reflected at the highest levels of public health advocacy. The **latest public statements<sup>14</sup> by the World Health Organization (WHO) clearly distinguish tobacco from food** when considering public health strategies viz:

*“People do not need to smoke, but they do need to eat and drink”*

and the WHO distinguishes the tobacco industry from the food industry when considering collaborative approaches viz:

*“Forget collaboration with the tobacco industry.....  
....Some [food industries] are taking measures to reformulate their products to reduce fat, sugar, and salt content and to modify their marketing practices. These are most welcome trends.”*

## 6.2. Provision of Energy Content on Standardised Menu Board Labelling

**Recommendation 18 of the Review is not supported.**

AFGC supports the provision of energy content on standardized menu board labelling. AFGC’s Quick Service Restaurant (QSR) Forum, which was convened in mid –2010, established as a first priority a policy to introduce energy declarations on menu boards in accordance with an industry code. Unlike regulatory interventions (which have subsequently been introduced in NSW) this would have provided a flexible, highly targeted labelling approach with potentially greater reach than the regulations which have been gazetted. Specifically, there would have been no requirement for limiting the initiative to larger restaurant chains only. AFGC notes that the regulations in NSW were gazetted with minimal industry or stakeholder consultation and without the preparation of a formal Regulatory Impact Statement. Interestingly they were also gazetted against backdrop of evidence indicating that the labelling is unlikely to result in consumers making alternative diet choices to the extent that a positive health outcome would result<sup>15</sup>.

**AFGC considers QSR menu board labelling to be primarily a ‘right to know’ issue. The Review did not provide strong evidence supporting menu board labelling as a critical public health intervention.**

The unseemly haste accompanying the introduction of the NSW legislation also led to numerous businesses being captured which were almost certainly beyond the intent the legislation. These included supermarkets and many coffee bar, juice bar and salad bar chains. It was clear in the industry consultations held after the gazettal of the legislation that the NSW Government had little, if any appreciation, of the implications of requiring energy labelling of “standardised menu items”. For example, this imposes the requirement to display the energy content of whole cooked chickens from supermarkets. The very high energy value is meaningless for consumers with per serve, or per 100g, labelling much more sensible.

A further concern to AFGC is that the current regulatory focus on menu board labelling is substantial deviation away from the fundamental policy position of successive governments in Australia at Commonwealth and State and Territory level that food standards will be developed

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<sup>14</sup> Dr Margaret Chan, Director-General of the World Health Organization *The rise of chronic noncommunicable diseases: an impending disaster* Opening remarks at the WHO Global Forum: Addressing the Challenge of Noncommunicable Diseases Moscow, Russian Federation 27 April 2011

<sup>15</sup> Productivity Commission. *Childhood Obesity: An Economic Perspective*. Staff working paper. 26 Oct 2010

within a national framework – namely as the Australia New Zealand Food Standards Code. **The current activities to develop menu board labelling within State and Territory food regulations in accordance with “principles” developed by the ANZFRMC is very worrying to AFGC. It appears to be a step backwards from the concept of national uniform regulations which has been the fundamental policy driving food regulation for two decades.**

#### Recommendation

**AFGC recommends that Australian Governments re-commit to the concept of national uniform food regulations through, in the first instance, directing State and Territory bureaucracies to pursue national uniform menu board labelling regulation through the Australia New Zealand Food Standards Code.**

Apart from the lack of consultation, the lack of a uniform national approach, and the failure to demonstrate the effectiveness of menu board labelling, there was no effort to estimate the cost. These have been estimated by AFGC to be at least \$28million (Section 7).

AFGC has made no attempt to estimate the cost of nutrition labelling on vending machines. The task is simply too complex. That the Review chose to recommend such labelling without considering the practicalities underscores the pitfalls of making judgements from a limited knowledge base. In comparison, when the US Food and Drug Administration when considering a similar requirement ruled that front-of-pack nutrition labelling of products displayed in clear front vending machines met the objective of providing nutrition information pre-purchase<sup>16</sup>.

### 6.3. New Technologies

The Review made a number of recommendations regarding how new technologies (defined as those requiring approvals) should be considered for labelling. AFGC has identified a number of concerns which would arise if these recommendations are adopted in regulation.

#### **Recommendation 28. ... Labelling for new technologies 30 years following introduction.**

AFGC considers this recommendation poorly thought out for two reasons:

1. The rationale for the 30 years is that if there were health concerns associated with the new technology they would be detectable in that time frame. This rationale is flawed. Safety assessments for new technologies are, and will be, extremely comprehensive. Any residual risk is extremely low to the extent that negative public health outcomes are unlikely to be detected through diet and health surveys, even after 30 years; and
2. It sends the message that regulatory agencies are uncertain about the safety of the technology. This stands to undermine consumer confidence in the regulator. Also industry is unlikely to introduce a technology which the regulators cannot agree unequivocally is safe. **That the Review proposed this reveals a fundamental misunderstanding that the labelling of new technology is not, and should not be, a safety measure.**

AFGC has also identified an “unintended” consequence of this recommendation. Many food additive technologies currently used by industry required approval when first introduced over 30 years ago, and are required to be labelled. If this recommendation was adopted many of these would no longer be required to be labelled. AFGC would not support these mandatory labelling requirements being dropped. It would send the wrong message to consumers regarding industry’s preparedness to inform consumers about the nature of their food products.

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<sup>16</sup> <http://www.fda.gov/Food/LabelingNutrition/ucm217762.htm>

## Gene Technology Labelling

AFGC supports the current mandatory labelling requirements for foods derived from gene technology. They:

- recognise the practical realities of a complex food supply chain handling both conventional and gene technology derived material;
- are enforceable for regulatory agencies through analytical testing and/or audit of systems; and
- they provide the basis for informing consumers when there is genetically modified (GM) material (i.e. DNA or protein) at appreciable levels in foods or ingredients.

**Recommendation 30 ... detection of an adventitious genetically modified event be followed by a period of monitoring and testing of that food or ingredient.** The Review considers the current provision allowing adventitious presence may be used by industry to “get around the rules”. That is, the Review suggests industry may seek to circumvent regulatory requirements. The Review failed, however, to describe how this might occur, or that there is evidence of it occurring. **This is therefore conjecture without substance which AFGC rejects.** More importantly, the proposal for testing is made without considering the difficulty and expense of developing and implementing statistically sound sampling plans robust enough to determine with confidence when the re-occurring presence of a material (i.e. GM material) at very low levels is random (i.e. adventitious) or non-random (i.e. intentional or the result of system failure).

### Recommendation

**AFGC recommends the Government seek the advice of appropriate experts in the grain handling industry, or elsewhere in the food sector on how feasible it would be to test food products for the unintentional presence of genetically modified material as suggested by the Review, and the likely benefit, or insights, that testing would provide in assisting compliance assessment with label requirements.**

**Recommendation 31 .... foods or ingredients with flavours containing detectable novel DNA or protein not be exempt from the requirements to.....label.** The original exemption was provided because of the difficulty in enforcing the labelling through testing. When the current low threshold is considered in the context of foods, the levels of GM material is very low indeed, pushing the technical capability of analytical techniques to demonstrate compliance. **Thus AFGC does not support this recommendation.**

**Recommendation 32. ....that foods or ingredients that have been genetically modified and would require declaration if labelled be declared on menu/menu boards ... in chain food restaurants ...and on vending machines.** AFGC does not support this recommendation. **Imposing additional labelling requirements without demonstrating the benefit to consumers through a Regulatory Impact Statement is unwarranted.** Companies may chose to provide information about the GM status of their products either directly or through websites if there is consumer demand. AFGC is unaware of chain restaurants receiving substantial queries from consumers regarding the GM status of their meals or ingredients. The same applies to proposals to label food in vending machines.

**Recommendation 33 .... governments ensure effective monitoring of labelling requirements....** AFGC supports the effective monitoring of compliance and enforcement of regulations. It is up to Governments and enforcement agencies to determine their priorities and

resource requirements. There is, however, no sound argument for Governments to resource testing capacity or capability beyond that required for enforcement.

**Recommendation**

**AFGC recommends that the current labelling provisions for foods derived from gene technology within the Australia New Zealand Food Standards Code be retained without amendment.**

**Irradiation Labelling**

**Recommendation 34: That the requirement for mandatory labelling of irradiated food be reviewed.** AFGC supports a review of the current requirement that irradiated food be labelled. AFGC does not, however, support the removal of the current requirement that irradiated foods be labelled, based on the technology having been shown to be safe following a long period of use. Irradiated food has been shown time and time again to be safe. Food labelling was always a 'right to know issue'. On this basis AFGC will not be advocating strongly for the removal of the labelling requirement. If, however, a review demonstrated that the level of community concern interest in this type of labelling was very low, AFGC would not oppose the requirements being relaxed.

**Nanotechnology Labelling**

**Recommendation 35: That Food Standards Australia New Zealand and other relevant bodies develop as a matter of urgency a standard for regulating the presence of nanotechnology in the food production chain, consistent with the recommendations in this Report relating to new technologies.**

AFGC supports the provision of meaningful information to consumers about the technologies used in the food industry, and has noted there are a variety of means beyond the food label for consumers find out about foods.

At the moment in Australia FSANZ considers the current regulatory requirements for both approval of nanotechnologies for use in foodstuffs, and possible labelling requirements are adequately provided for in the FSC. It should be noted, however, that nanotechnology used in manufacturing in Australia does not occur – at least AFGC is unaware of specific nanotechnologies being used in Australia. Once the technology is adopted AFGC would support a labelling regime comprising both mandatory regulations and industry codes, with the levels of each determined by the requirements to ensure safe food, the consumers right to know and the specifics of the technology.

**Recommendation**

**AFGC recommends any labelling requirements for approved nanotechnologies be considered on a case-by-case basis with options for both mandatory requirements and the use of industry codes as appropriate.**



## 6.4. Prescriptive vs. Outcomes Focused Standards

When the current FSC was developed it followed several years of consultation. Whilst there was a good deal of debate regarding the content of the standard among stakeholders, there was little disagreement regarding the one of the fundamental policies which should be followed. **Under that policy the new FSC was to become outcomes focused rather than prescriptive.** The primary role of food standards is ensuring foods are safe and consumers have enough information about them for informed choice. **Several recommendations of the Review indicate that this point was not fully understood.** Including a recommendation for a font size of 3.5mm if adopted would take the FSC back in time to an era when font size was specified. In reality, no matter what the font size is, some members of the community would not be able to read it due to problems with their vision. In recognition of this the current FSC specifies that labels should be legible with advice provided in a user guide regarding how this can be achieved. It ultimately relies upon industry to ensure its labels are legible. In fact, the FSC could not be clearer in its demands that food labels are legible. It states:<sup>17</sup>

*“Unless otherwise expressly permitted by this Code, each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background, and in the English language.”*

This statement is unequivocal. It requires labels to be legible - *ipso facto* they must use appropriate font sizes. Furthermore, industry has a track record of collectively deciding to optimise legibility where information is particularly important. Additional labelling advice for allergen labelling is included in AFGC’s *Code of Practice on Food Labelling and Promotion*.

### Recommendation

**AFGC recommends the current food regulatory policy seeking outcomes based rather than prescriptive food standards be reaffirmed in the Government’s response to the Review.**

## 6.5. Nutrition, Health and Related Claims and Labelling

### Front-of-pack Labelling – the Review’s case for “Traffic Lights”

In the ongoing public regulatory policy debate about front-of-pack labelling, AFGC has consistently advocated for the DIG front-of-pack labelling scheme. The DIG scheme has been successfully introduced in Australia with well over 2000 products carrying the “thumbnail” icons which inform consumers about the nutrient content *per serve* of the product, and its contribution to an average adult diet. Despite the food industry’s substantial investment in the DIG scheme, and the ongoing consumer education support, the Review chose to recommend an alternative scheme based on multiple traffic lights (MTL). **AFGC adamantly opposes MTL labelling as it inappropriately imposes dietary guideline criteria on single food products, undermining accepted wisdom of the importance of variety, moderation and balance in diets tailored to individual consumer needs.**

The Review presents its case for MTL based on scientific literature. AFGC contends, however, that the Review failed to adequately review and assess the evidence base. Moreover, it made recommendations which could only come to pass through amendments to the FSC following appropriate assessment and recommendations by FSANZ. Developing such specific

<sup>17</sup> Australia New Zealand Food Standards Code. Standard 1.2.9 – Legibility Requirements. [www.foodstandards.gov.au](http://www.foodstandards.gov.au)



recommendations not only went beyond the terms of reference of the review, but showed some naivety regarding the ability of Government to respond.

Front-of-pack nutrition labelling has received attention around the world as a potential policy instrument for increasing the number of people meeting dietary recommendations. AFGC has, however, exhaustively reviewed the scientific literature and concluded there is no substantial body of peer-reviewed scientific evidence which would warrant mandatory MTL formats for front-of-pack labelling. Evaluations of its impact on consumer behaviour in real-life settings (and consequent improvements in community-wide food choices) are scarce and inconclusive at this time, indicating an important gap in knowledge<sup>18</sup>. While it is clear that consumer motivation and behaviour is unpredictable, hugely variable and difficult to influence via food labelling.

A further argument for front-of-pack labelling is that it would stimulate reformulation activities in the food manufacturing sector. **The food manufacturing industry in Australia is actively reformulating products to assist consumers construct healthy diets in partnership with the Government**<sup>19</sup>. This often happens behind the scenes and is not overtly promoted because, perversely, healthier products often do not sell well<sup>20</sup>, possible because of the other strong drivers of purchase including price, taste and convenience. Many companies have salt reduction strategies which over recent years have resulted in substantial reductions in levels of salt across a wide range of products<sup>21</sup>. This contrasts with the selective reporting by the Review of examples of reformulation yoghurt to higher energy and fat levels Australia between 2005 and 2008<sup>22</sup>.

Clearly if there is a body of published evidence demonstrating consistent, significant and widespread effort in the global food manufacturing sector to reduce those nutrients considered most risky to health in non-treat foods, dietary patterns will begin to change regardless of consumer motivation<sup>23,24,25,26,27,28,29,30</sup>. In this case, further regulatory intervention would be over burdensome.

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<sup>18</sup> Tymms, S. (2011) Design, format and impact of front-of-pack nutrition labelling: An independent review of refereed literature. Final report for the Australian Food and Grocery Council.

<sup>19</sup> <http://www.health.gov.au/internet/main/publishing.nsf/Content/food-health-dialogue>.

<sup>20</sup> Alexander, D. and Hazel, J.-A. (2008). Front-of-pack Labelling: Perspectives of the New Zealand Food Industry Final Report. NZFSA reference: 10767, September, 62pp.

<sup>21</sup> Cobcroft M et al. Food Australia 60 (3) March 2008.

<sup>22</sup> Walker, K.Z., Woods, J., Ross, J. and Hechtman, R. (2009). Yoghurt and dairy snacks presented for sale to an Australian consumer: Are they becoming less healthy? *Public Health Nutrition*, 13(7): 1036-1041.

<sup>23</sup> Young, L. and Swinburn, B. (2002). Impact of the Pick the Tick food information programme on the salt content of food in New Zealand. *Health Promotion International*, 17: 13-19.

<sup>24</sup> Williams, P., McMahon, A. and Boustead, R. (2003). A case study of sodium reduction in breakfast cereals and the impact of the Pick the Tick food information program in Australia. *Health Promotion International*, 18(1): 50-56.

<sup>25</sup> Fear, T., Gibbons, C. and Anderson S. (2004). The Heart Foundation's 'Tick' Program. Driving Innovation for a healthier food supply. *Food Australia*, 56(12): 599-600.

<sup>26</sup> Nijman, C.A.J., Zijp, I.M., Sierksma, A., Roodenburg, A.J.C., Leenen, R., van den Kerkhoff, C., Westrate, J.A. and Meijer, G.W. (2007). A method to improve the nutritional quality of foods and beverages based on dietary recommendations. *European Journal of Clinical Nutrition*, 61(4): 461-471.

<sup>27</sup> Jones, S., Tapsell, L., Andrews, K., Williams, P. and Gregory, P. (2009). Australian consumers' discernment of different sources of 'healthy eating' messages. *Australasian Marketing Journal*, 17: 238-246.

<sup>28</sup> Mellentin, J. (2009). Can GDA front-of-pack labelling affect your sales? *Dairy Industries International*, 74(7): 16.

<sup>29</sup> Vyth, E.L., Steenhuis, I., Roodenburg, A., Brug, J. and Seidell, J. C. (2010). Front-of-pack nutrition label stimulates healthier product development: a quantitative analysis. *International Journal of Behavioral Nutrition and Physical Activity*, 7: 65.

<sup>30</sup> Mhurchu, C.N., Capelin, C., Dunford, E.K., Webster, J.L., Neal, B.C. and Jebb, S.A. (2011). Sodium content of processed foods in the United Kingdom: analysis of 44,000 foods purchased by 21,000 households. *American Journal of Clinical Nutrition*, 93: 594-600, doi:10.3945/ajcn.110.004481.

**It is AFGC's view that the Review did not sufficiently examine literature relating to an association between nutrition labelling and food industry action.**

Gaps in knowledge are evident in the question of whether Government intervention through front-of-pack labelling will alter either consumer or food industry behaviour in favour of improving community diet. Clarifying those areas where knowledge is scarce or the findings of rigorous peer-reviewed studies are inconsistent is essential for the Government in considering its next actions. Addressing these knowledge gaps ought to become priority number one, prior to developing any further policy instruments.

*Evaluating policy proposals and existing instruments in Australia*

If the evidence *were* to show a strong link between front-of-pack label use and either healthier consumer food choices or widespread product reformulation then all regulatory options need to be assessed. Critically, regulation is a last resort where self-regulatory, co-regulatory and non-regulatory approaches are conceivable.

In Australia, where the mandatory NIP on the rear or side of packaged food co-exists with several different voluntary front-of-pack nutrition labelling schemes, assessment of the *status quo*, as well as any new proposal, must be undertaken in order to ensure that an effective and proportionate response is developed.

For example, it would be useful if the impacts and effectiveness of the National Heart Foundation of Australia 'Tick', the Glycemic Index Foundation 'Low GI Symbol' and indeed the AFGC's DIG labelling scheme were carefully examined (studies such as Williams *et al*<sup>31</sup>, Young and Swinburn<sup>23</sup> need to be updated). Government needs to work with the sponsoring organisations to gather and analyse relevant data in order to ascertain whether these labelling schemes have contributed to healthier dietary intake and to what extent. Contrary to the unusual view expressed by the Review (para 7.13) that front-of-pack nutrition labelling schemes have;

*"occurred in an ad hoc fashion without public debate or active government deliberation"*

these schemes have arisen out of productive collaboration between organisations which have found common ground in striving to balance consumer demand with commercial imperatives and community health goals. Working with those organisations to better achieve the objective would be preferable and less costly to enacting new regulation.

If it is determined that a co-regulatory or mandatory approach is warranted, evaluation of proposals necessitates cost-benefit analysis. Sacks *et al*<sup>32</sup> modelled policy options including 'traffic light' labels on certain food categories. Traffic light labelling was determined to be more cost effective than diet and exercise interventions on obesity prevention. **A key assumption of the study was that a 'traffic light' labelling intervention would influence consumer purchase behaviour—an assumption which the authors acknowledge is tenuous.** Linking changes in product demand to the policy instrument is challenging and published material is scarce. However, adopting the policy option yielding the greatest net benefit to the community is an important step.

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31 Williams, P. and Duncan, R. (2009). *Project FI088 – Audit of Daily Intake Labelling*. Prepared for the Australian Food and Grocery Council, 71 pp.

32 Sacks, G., Veerman, J.L., Moodie, M. and Swinburn, B. (2010). 'Traffic-light' nutrition labelling and 'junk-food' tax: a modelled comparison of cost-effectiveness for obesity prevention. *International Journal of Obesity*, advance online publication, 16 November, doi:10.1038/ijo.2010.228.

**The Review provides scant analysis of the impacts of existing Australian schemes; nor does it seek to comment on the strengths and weaknesses or costs and benefits associated with a range of policy options.** Also, more recent advice from the European Union indicates ‘traffic light’ front-of-pack labelling is not required, but that nutrient content declarations consistent with the DIG front-of-pack labelling approach is sufficient.<sup>33</sup>

#### *Coverage of the proposed regulation*

If there was robust evidence in favour of regulating front-of-pack labelling in Australia, the question of which foods require the intervention arises. It may not be appropriate to apply the regulation to all food groups, as recommended by the Review (para 7.31).

Dunbar<sup>34</sup> found that while DIG type labelling improved people’s ability to make healthier food choices across the population, prior beliefs and knowledge about some foods negate the role of labelling in those specific cases. For example, most people consider wholemeal bread is a ‘healthier’ choice than white bread, rendering the front-of-pack nutrition information potentially less valuable here. This may also be the case for fresh products such as fruit, vegetables and meat as well as products regarded as a treat, such as chocolate<sup>35</sup>. **Labels on products considered to be a treat or on those purchased routinely are rarely consulted<sup>35,36,37</sup>. This underscores the importance of promoting the use of labelling schemes such as the DIG.**

#### *Prescribed requirements of the proposed regulation*

Finally, the level of regulatory prescription warrants consideration. In Australia and New Zealand outcomes-based standards are considered best practice. The objective of the regulation is carefully described, allowing various approaches to achieve compliance.

A general finding from the economic literature is that a regulation is more effective the closer it targets the ultimate goal. This allows for flexible adoption by those responsible for implementation<sup>38</sup>. A key component of regulatory effectiveness depends on:

*“...the affected agents’ possibilities to adjust to the regulation, and thus save costs, while still complying with the regulation, because a higher adjustment possibility within the regulation’s aim implies a stronger incentive to comply. This relationship is also valid with regard to regulating the diet in order to improve the future health of the population and public health-care costs: The more directly and precisely the measures can be targeted towards these objectives, the more effective are the measures”<sup>38</sup>*

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<sup>33</sup> [http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed\\_legislation\\_en.htm](http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed_legislation_en.htm).

<sup>34</sup> Dunbar, G. (2010). Task-based nutrition labelling. *Appetite*, 55: 431-435, doi:10.1016/j.appet.2010.07.016.

<sup>35</sup> Grunert, K.G. and Wills, J.M. (2007). A review of European research on consumer response to nutrition information on food labels. *Journal of Public Health*, 15(5), doi:10.1007/s10389-007-0101-9.

<sup>36</sup> Malam, S., Clegg, S., Kirwan, S. and McGinival, S. (2009). *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*. UK Food Standards Agency, London, 150pp.

<sup>37</sup> Roos, G., Kjærnes, U. and Ose, T. (2010). *Warning labels on food from the point of view of consumers*. National Institute for Consumer Research, Oslo, Norway, 80pp.

<sup>38</sup> Jensen, J.D. (2011). Design of Economic Incentive Instruments in Nutrition Policy. In R.R. Watson et al (eds), *Nutrients, Dietary Supplements, and Nutraceuticals: Cost Analysis Versus Clinical Benefits*, Nutrition and Health, Part 1: 3-17, doi:10.1007/978-1-60761-308-4\_1.

This aligns with the recent recommendations of the US Institute of Medicine report to the US Congress, “*Examination of Front-of-Pack Nutrition Rating Systems and Symbols*”<sup>39</sup>. Front-of-pack labelling should target only those nutrients most strongly linked with the health concerns of Americans (e.g. energy, saturated fat, trans fat and sodium, with serving size also clearly articulated) and that any schemes applied should be based on standardised underpinning nutrient criteria, while allowing for innovation and flexibility in label design and appearance.

In conclusion the Review lacks the rigorous policy analysis process required by COAG. The Review has neglected to evaluate front-of-pack labelling against these fundamental criteria for assessing the role of Government.

The case for Government consideration of a front-of-pack labelling intervention has to be predicated on:

1. a clear indication that the share of healthy food choices among consumers will increase,
2. that innovation in food products will be stimulated, and
3. through changes in food choices, has it had a significant impact on public health.

The Review fails to articulate that evidence in peer-reviewed scientific literature in support of points 1 and 3 above is inconsistent and inconclusive and that there is an urgent need for further knowledge in relation to point 2.

Furthermore, understanding the impact of the current front-of-pack labelling arrangements in Australia is also lacking. **Overall, the current mixed evidence base does not demonstrate a solid foundation for a mandatory ‘traffic light’ colour-coded labelling.**

This clear finding makes the ‘implement and evaluate’ approach espoused by the Review difficult to justify and a manifest departure from well-established best practice in regulatory assessment. Striking gaps in the policy assessment and regulatory analysis undertaken by the Review Panel will need considerable attention by the Government in considering any further intervention in front-of-pack nutrition labelling.

AFGC notes also that in considering front-of-pack labelling it is still the case that no jurisdiction anywhere in the world has introduced a mandatory multiple traffic light labelling system. Furthermore, no jurisdiction appears to be advocating the value of such a system, reflecting the overall lack of evidence supporting the effectiveness of this type of food labelling.

**The corollary is that it is highly unlikely that FSANZ would be able to develop a case strong enough to warrant amendment to the FSC mandating a traffic light format for front-of-pack labelling, even on a voluntary use basis.**

#### Recommendation

**The AFGC recommends Government reject any regulation which favours any particular form front-of-pack labelling unless there is strong scientific evidence demonstrating its particular effectiveness over other labelling approaches in influencing consumers to construct healthier diets.**

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<sup>39</sup> Wartella, E.A., Lichtenstein, A.H. and Boon, C.S. (eds)(2010). *Examination of Front-of-Pack Nutrition Rating Systems and Symbols: Phase I Report*. Committee on Examination of Front-of-Pack Nutrition Ratings Systems and Symbols, Food and Nutrition Board, US Institute of Medicine, Washington D.C., 140pp., available online at <http://www.nap.edu/catalog/12957.html>

## Front-of-pack Labelling – AFGC’s Daily Intake Guide

AFGC has successfully introduced a voluntary front-of-pack labelling scheme termed the Daily Intake Guide labelling front-of-pack labelling scheme (DIG). Its success is underscored by the:

- steady growth in uptake by food companies and retailers in Australia and New Zealand with well over 2000 products across major food categories and brands now carrying the DIG “thumbnail” icons;
- continuing promotion to consumers through television commercials, web ([www.mydailyintake.com.au](http://www.mydailyintake.com.au)) and point of sale information providing guidance on how the DIG labels can be used to assist in health diet construction;
- acceptance by major regulatory agencies overseas in the UK and EU that it is a satisfactory labelling approach;
- support in the scientific literature that DIG is at least as effective as other major front-of-pack labelling schemes; and
- incorporation in Australia into the AFGC’s *Code of Practice for Food Labelling and Promotion* which provides a comprehensive management framework for performance monitoring, review and revision of the scheme to ensure it remains effective<sup>13</sup>.

**AFGC opposes simplistic colour schemes as potentially being misinterpreted to the extent that moderation, variety and balance in diets is compromised.** This is the basis for AFGC’s opposition to ‘traffic light’ labelling. Through adopting the AFGC’s DIG labelling scheme the food industry has made a major commitment to the ongoing provision of nutrition information to consumers in this format. Industry has spent substantial amounts of money, and continues to do so even against the backdrop of regulatory uncertainty created by the Review<sup>40</sup>.

**AFGC calls upon the Government to provide more overt support for the DIG labelling scheme.** AFGC, Government and other stakeholders are already working in partnership through the Food and Health Dialogue<sup>19</sup> to reduce the level of risk association nutrients in food products, to construct better databases of the nutrient composition of foods and to jointly promote healthy eating messages. AFGC considers the Government has an important role to play in assisting industry promote its DIG labelling scheme. With strong promotion comes better consumer understanding and greater effectiveness in helping consumers with their food purchasing and dietary choices.

In Canada the Government’s primary health and regulatory agency, Health Canada, is providing strong support for food labels which promote the daily intake concept<sup>41</sup> (see Figure 2).

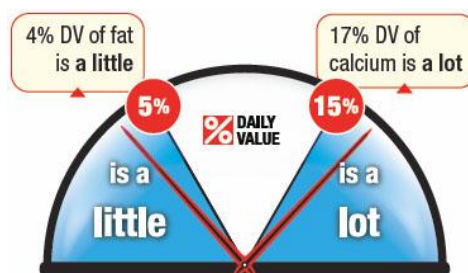
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<sup>40</sup> <http://www.woolworths.com.au/wps/wcm/connect/WWebsite/Woolworths/About%20Us/Woolworths-News/woolieshelpscustomersmakeinformedfoodchoices>

<sup>41</sup> <http://www.hc-sc.gc.ca/fn-an/label-etiquet/nutrition/cons/fact-fiche-eng.php>



Figure 2. Daily intake value icon used by Health Canada



This device is being used on in conjunction with the Nutrition Facts Panel advising consumers on how to use the daily intake values for a range benefit- and risk-associated nutrients.

The AFGC calls upon both Commonwealth and State and Territory Governments to join with AFGC and the wider industry in promoting the DIG front-of-pack labelling scheme.

### Recommendation

**That the Commonwealth, State and Territories work in partnership to promote the AFGC's Daily Intake Guide front-of-pack labelling scheme to enhance its effectiveness in assisting consumers construct healthy diets.**

### Health Claims

AFGC has long advocated a relaxation of the current prohibition in *Transitional Standard 1.1A.2* and the establishment of a framework on health claims to allow food companies to tell consumers how particular products may protect and promote good health in the context of a healthy diet and lifestyle. 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.

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.

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

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.



Notwithstanding this strong, evidence-based policy position AFGC has failed to win support either from regulatory agencies or broader public health agencies to this approach. Opposition stems primarily from three major concerns regarding the potential of health claims to:

1. either mislead or motivate individuals to consume inappropriate amounts of the food through strong messaging of the links between a food product and its consumption;
2. contribute to inappropriate marketing strategies, again with the potential to mislead consumers; and
3. create enforcement difficulties regulatory agencies due to the health claims relying on complex science for their substantiation and application.

The Review recommended introduction of a health claims system comprising:

- a combination of regulation and a code of practice;
- a list of pre-approved claims listed in the food standards code;
- specific levels of substantiation for claims to be applied;
- additional qualifying criteria based on nutrient profiles;
- claims to trigger a standardised front-of-pack labelling system.

**This approach is largely in line with established AFGC policy** with the exception that AFGC has argued against the use of nutrient profiling systems for two reasons:

1. nutrient profiling can be (and often is) used to classify foods as “healthy” or “unhealthy” contrary to established nutritional wisdom which is unequivocal in its advice that all foods can be incorporated into healthy diets (with the converse also true); and
2. in the context of health claims nutrient profiling can create essentially arbitrary qualifying and disqualifying criteria ruling out a food from carrying a health claim, even with the strongest evidence that food is beneficial if consumed in the manner intended.

AFGC considers therefore that nutrient profiling is a fundamentally flawed tool. Moreover AFGC considers the FSANZ *Nutrient Profiling Scoring Criteria* system particularly flawed ([Appendix 5](#)).

AFGC is already well down the path of developing comprehensive guidance to industry on the use of general level health claims. This guidance will become an integral part of the AFGC’s *Code of Practice for Food Labelling and Promotion* (“labelling Code”) which was implemented in January 2011. AFGC proposes that the nutrition and health claims provisions of the labelling Code will complement FSANZ’s regulatory arrangements for health claims. Furthermore, AFGC also intends to develop additional guidance on the use of descriptors such as “fresh”, “natural” and other credence claims such as “free range”. This will also be provided within the labelling Code. Within the labelling Code advice will also be provided on when the DIG front-of-pack labelling scheme should be used.

The full regulatory framework proposed by AFGC in the area of nutrition and health claims is shown Table 2. The combination of full regulation combined with complementary industry codes is consistent with the risk management hierarchical approach proposed by the Review. It is also consistent with established regulatory policy which prescribes proportionate regulatory responses.

This approach is consistent with FSANZ’s risk analysis approach to food standards development.

**Recommendation**

**AFGC recommends that the future regulatory system for nutrition labelling and nutrition, health and related claims comprise a combination of mandatory requirements and industry voluntary codes based on the concept of proportionate regulatory responses and scientific evidence-based risk analysis with:**

- 1. a voluntary code guiding the use of credence claims and nutrition content claims;**
- 2. a voluntary code guiding the use of general level health claims, with a list of agreed claims based on scientific substantiation; and**
- 3. the Food Standards Code permitting higher level health claims based on pre-approval and scientific substantiation.**

As part of this approach AFGC supports the advice being given to industry regarding the use of trade names and nutrition and health claims within a voluntary code, consistent with Recommendation 21 of the Review.

**Table 2. Proposed framework for qualifying criteria and guidance on the use of credence claims, nutrition, health and related claims.**

<b>Range of credence, nutrition, health and related claims</b>	<b>Regulatory Approach</b>	<b>Substantiation</b>	<b>Conditions for use</b>	
<b>Credence Claims - Words (e.g. fresh, natural etc.)</b>	AFGC Code of Practice for Food Labelling and Promotion	Definitions and guidance	Plain English, straightforward use of words in a non-misleading fashion.	
<b>Trade names</b>				
<b>Nutrient content claims</b>	AFGC Code of Practice for Food Labelling and Promotion	Guidance	Nutrient / food component present at levels provided in guidance.	
<b>Health claims – general level</b>	AFGC Code of Practice for Food Labelling and Promotion/ FSC	Pre-agreed claims listed in AFGC Code. Substantiation as required by FSANZ or prescribed in the FSC	Scientific evidence demonstrates physiological effect	Display of DIG Front-of-pack Labelling
<b>Health Claims – higher level</b>	Food Standards Code – submit substantiation for approval	Pre-market assessment and approval specified in FSC.	Scientific evidence demonstrates efficacy in the context of a balanced diet	Display of DIG Front-of-pack Labelling

## 6.6. Trans- Fat Labelling

The Review has recommended mandatory declaration of all *trans* fatty acids above an agreed threshold be introduced in the NIP (Recommendation 13). The discussion in the Review supporting this recommendation is technically flawed (see Section 6.7)

FSANZ continues to advise that the level of *trans*-fat in the Australian diet is well below WHO recommended levels with only 0.6% of dietary energy being derived from *trans*-fats.

On this basis, it is unlikely that FSANZ will be able to develop the required level of evidence of public health benefit required to justify mandatory labelling of *trans*-fats. Indeed, AFGC will not support any amendments to the FSC to require *trans*-fat labelling unless they are fully justified through FSANZ processes including a full Regulatory Impact Statement. Furthermore AFGC would expect any amendments would include:

- appropriate thresholds so that only nutritionally significant levels of *trans*-fats in food trigger a label. AFGC would not support a labelling standard which required foods essentially free from *trans*-fats to carry a *trans*-fat label. This would potentially mislead consumers regarding the appropriateness of the foods for their dietary needs;
- the standard applying equally to all *trans*-fat containing products unless a strong scientific evidence base exists for differentiating between products on the basis of their *trans*-fats composition and levels of consumption in the diet. To do otherwise risks distortion of the market place and unjustified advantage or disadvantage accruing to food products; and
- a sound basis for enforcement of *trans*-fat labelling.

It is highly unlikely that a robust case for *trans*-fat labelling will be developed by FSANZ based on a public health imperative supported by a Regulatory Impact Statement. **On this basis AFGC does not support mandatory *trans*-fat labelling.**

### Recommendation

**AFGC recommends the Government reject any proposals for mandatory *trans*-fats labelling unless they are developed through the normal FSANZ processes leading to amendment of the Food Standards Code.**

## 6.7. Technical Errors in the Review

AFGC has identified a number of occasions within the Review where there are scientific errors. This shortcoming possibly reflects the lack of food science and technology expertise on the Review panel. This has resulted in flaws in scientific fact and scientific logic *inter alia*:

- The Review's Recommendation 11 suggests that an industry voluntary code be developed listing of additives, colours and flavouring based on "agreed medical priority for sensitive consumers" for labelling purposes. **This is nonsensical.** It indicates the Review does not appreciate the basis for regulatory approval being provided for food additives. Such approvals are provided based on evidence that they are safe to be used in foods at intended levels. If the presence, or the levels, are known to have adverse health implications for some

consumers a warning statement will be prescribed. If, at a time after regulatory approval is provided, evidence arises of further health concerns, approval will be withdrawn, or further label statements might be prescribed. Thus there is simply no basis for establishing a priority list of additives, colours or flavourings as they are all determined to be equally safe [for most of the population].

- The Review suggests that expanding the ingredient and additive list to ensure that specific types of oils and/or sugars are labelled to indicate their origin (i.e. palm oil) or type (i.e. maltose/ dextrose etc.) will provide consumers with further information to assist their health (Recommendation 12). **The Review has clearly failed to appreciate that oil blends can change without any impact on the nutrient content of the food.** The purpose of providing for generic labelling – such as vegetable oil, as opposed to canola, or palm, or sunflower oil is to allow the food industry flexibility in their use of oils in response to availability and cost. Removing this flexibility will invariably lead to higher industry and consumer costs.

*(Note: The Truth in Labelling Bill – Palm Oil is currently being considered by the The House of Representatives Standing Committee on Economics having been supported in The Senate. AFGC has opposed this Bill on the basis that it threatens costs on industry and consumers, circumvents FSANZ regulatory processes, may transgress the Trans- Tasman Mutual Recognition Treaty, fails to provide for its objective, is unenforceable, and has not been through any form of consultation with any stakeholders including State and Territory jurisdictions which will be required to enforce it; [www.afgc.org.au](http://www.afgc.org.au).)*

- The Review suggests there is some fundamental difference between “natural fibres” and other fibres in nutritional value or health benefit, to the extent that they should be specifically label (Recommendation 14). AFGC is unaware of any studies which either proposes a rationale for such distinctions or presents scientific evidence supporting the distinction. AFGC can only assume the Review has taken out of context current nutritional wisdom which includes advice to eat plenty of fruit and vegetable which are a good source of dietary fibre, and concluded [erroneously] that alternative sources of dietary fibre, perhaps fibre polysaccharides such as inulin, are less beneficial.
- In the discussion on *trans*-fats the Review states:

*‘However, there are still some particular food products that contain significant levels of manufactured trans fatty acids (TFA), well above the 1% of energy threshold recommended by the WHO.*

The WHO recommendation for *trans*-fat intake to be below 1% energy refers to the total amount of *trans*-fat in an individual’s overall diet. It is inappropriate to infer that this is the level which should then be applied to individual food products. This approach is not used for other nutrient labelling requirements.

#### Recommendation

**The AFGC recommends that the Government pass over those Review recommendations which are clearly based on factual errors, technical flaws, or misunderstanding of the agreed processes for food policy and regulation setting.**

## 6.8. Alcohol

Alcoholic beverages are regulated through the FSC as they are classified as foods. AFGC supports this classification and the legislative arrangements.

The Review has noted that the consumption of alcohol has implications for public health in three main areas viz:

1. excessive consumption has many direct and indirect impacts of the health of individuals through the damaging physiological effects of large amounts of alcohol, and the consequences of anti-social behaviour;
2. the potential of alcoholic beverages to contribute to the diet, and particularly large amounts of energy which may contribute to high levels of overweight and obesity; and
3. the potential for even moderate levels of alcohol consumption by pregnant women to damage the health of the foetus.

AFGC does not consider there is strong evidence that mandatory labelling addressing these three issues will be effective at reducing the public health impact of alcohol. Notwithstanding this AFGC does support some further labelling of alcoholic beverages.

**AFGC does not support a mandatory general advisory statement warning consumer about the dangers of excessive alcohol consumption.** There is already a high level of awareness of dangers of excessive alcohol consumption within the community, which is underscored by numerous cultural and community expectations. Simply, people know they should not drink alcohol to excess.

The evidence linking excessive alcohol consumption by pregnant women and foetal alcohol syndrome is strong. Unfortunately it is impractical to determine if there is a safe level of alcohol consumption during pregnancy and AFGC accepts the current medical wisdom that total abstinence during pregnancy is desirable. **AFGC therefore supports alcoholic beverages carrying a simple advisory statement to the effect that pregnant women, or women planning to become pregnant should abstain from alcohol.** AFGC notes, however, that the Review recognises (para 4.73) that

*“There is wide recognition that warning labels in isolation are unlikely to be effective in modifying behaviour.”*

AFGC considers any warning statements advising against alcohol consumption for pregnant women must be accompanied by an ongoing social marketing campaign supported by Government and Industry.

AFGC is aware that some alcoholic beverages manufacturers have publicly stated they will include warning statements regarding the detrimental effects of excessive alcohol consumption<sup>42</sup>. The voluntary industry actions should be given time to demonstrate their effectiveness prior to any regulatory interventions. Moreover, Government should assist the industry in promoting consumer awareness of the labelling as a way of boosting their effectiveness.

AFGC does not consider there is a strong case for the inclusion of NIPs on alcoholic beverages. Current National Health and Medical Research Council advice, if adhered to, would result in very modest amounts of nutrients being contributed to the diet by alcoholic beverages. Notwithstanding this some beverages do have substantial amounts of nutrients and calories and there is, therefore, some rationale for inclusion of NIPs on alcoholic beverages. For example, there may be

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<sup>42</sup> <http://lion-nathan.com.au/media-centre/2011/01/28/review-of-food-labelling-law-and-policy-2011/>

appreciable levels of fat/saturated (e.g. where the beverage contains cream) or sodium (e.g. where the beverage contains tomato juice) or sugar (e.g. where the beverage is a mixed drink beverage).

**Excessive weight gain and obesity is a major health challenge in Australia and for this reason AFGC supports the declaration of nutrients and energy on alcoholic beverages.** It is important consumers recognise that alcoholic beverages contribute to overall dietary energy. An energy declaration which sums the contribution of alcohol, and other macronutrients, is appropriate.

It would seem therefore that the alcoholic beverage industry is already moving to provide further label information on alcoholic beverages in the absence of full regulation. Any move to full regulation through amendment of the FSC would, of course, require complete examination of its potential benefit through FSANZ processes including the development of a Regulatory Impact Statement. AFGC would support *in principle* moves for greater labelling if FSANZ were to raise a proposal as long as any mandatory labelling recognised any voluntary labelling being used in the market place, the fact that a great many Australians consume alcohol responsibly, and clear objectives with the labelling proposal being identified.

#### Recommendation

##### AFGC recommends:

- **the Government support the use of voluntary statements on alcoholic beverages advising responsible alcohol consumption and assist the industry to monitor the effectiveness of those labels in influencing consumer behaviour prior to the introduction of mandatory labelling requirements; and**
- **any mandatory label changes, including for nutrition labelling, only be introduced following development of a complete case by FSANZ, including a robust Regulatory Impact Statement, and complements any voluntary label statements being made by companies.**

## 7. THE COSTS TO INDUSTRY OF REGULATORY CHANGES

The Review has made recommendations which if adopted in their entirety would result in major labelling changes for every packaged food, every vending machine, and (nearly) every restaurant menu board, and many other retail food outlets in Australia and possible New Zealand. Such extensive changes would be extremely costly for the food industry. In addition operational costs for some food companies would increase with less flexibility in ingredient supply (Recommendations 12, 30, 31,42).

Companies incur many costs, however for the purposes of developing the cost schedule, direct costs are defined as<sup>43</sup>:

- label design – the cost of engaging designers to make changes to or redesign the label (or package for direct print labels);
- label production – the costs associated with the production of labels over and above printing, such as new printing plates;

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<sup>43</sup> Food Standards Australia New Zealand Cost Schedule for Food Labelling Changes Final Report (version 2) March 2008



- proofing – cost of viewing incorporated text, colour and/or graphics changes to the label, to ensure that the label is how it should be before printing, possibly including testing new plates;
- package redesign – the costs associated with changing the shape, or size of packaging. The direct costs include packaging redesign costs and packaging proofing costs; and
- labour – the labour inputs involved in responding to regulatory changes, such as marketing, management, administration, technical and regulatory expertise.

**With such large costs foreshadowed, the onus is upon Government to conduct comprehensive Regulatory Impact Statements investigations for each label change to ensure any mandatory label changes are fully justified.**

### 7.1. Estimation of Regulatory Costs

AFGC is not in a position to conduct a detailed costing of the potential impact of all of the recommendations in the Review if they were adopted due to the size of task and its complexity. Notwithstanding this it is possible to provide some indicative estimates of the order of magnitude of change of labelling costs. It is important to appreciate that cost will be significant if any single recommendation of the Review is adopted which mandates a label change precipitating a major label redesign. This would include recommendations for front-of-pack labelling, changing of font size, placing all “health related” labelling elements together and restrictions of claims under the proposed health claims standard.

AFGC has developed some estimates based on member feedback. The costs of label changes, depending on the pack fall mainly in the range from around \$5,000 to around \$15,000 per stock keeping unit (SKU) (See Table 3).

**Table3. Indicative Costs of label changes to food packages**

	Lithograph	Flexograph	Gravure
<b>Pack Design Origination</b>	\$5000	\$5000	\$5000
Artwork development and creation	\$1500	\$1500	\$1500
	\$1200	\$2400	\$5000
<b>Total costs</b>	<b>\$7,700</b>	<b>\$8,900</b>	<b>\$11,500</b>
	Lithograph	Flexograph	Gravure
<b>Pack Design Origination – Medium</b>	\$6800	\$6800	\$6800
Artwork development and creation	\$1500	\$1500	\$1500
	\$1200	\$2400	\$5000
<b>Total costs</b>	<b>\$9,500</b>	<b>\$10,700</b>	<b>\$13,300</b>
	Lithograph	Flexograph	Gravure
<b>Pack Design Origination - Complex</b>	\$8800	\$8800	\$8800
Artwork development and creation	\$1500	\$1500	\$1500
	\$1200	\$2400	\$5000
<b>Total costs</b>	<b>\$11,500</b>	<b>\$12,700</b>	<b>\$15,300</b>

These estimates concur well with estimates previously reported by PWC in a study<sup>43</sup> commissioned by FSANZ, although PWC did report a wider range. The extremes of this range most likely represent low volume products (Table 4).

**Table 4. Estimated costs of label changes for different packaging formats.**

Packaging Format	Minor Label <sup>‡</sup> Change	Medium <sup>‡</sup> Label Change	Major <sup>‡</sup> Label Change
<b>Glass</b>			
Bottle	\$3,967	\$9,664	\$12,787
Jar	\$3,811	\$8,318	\$19,420
<b>Metal</b>			
Aluminium can	\$4,784	\$9,042	\$8,946
Steel can	\$3,498	\$9,690	\$23,515
<b>Plastic</b>			
Tub	\$2,940	\$8,908	\$29,923
Bottle	\$4,686	\$11,871	\$26,429
Jar	\$4,750	\$10,100	\$28,350
<b>Fibre</b>			
Folding carton	\$2,885	\$6,825	\$13,962
Corrugated carton	\$3,048	\$6,425	\$10,950
Liquid paperboard carton	\$3,538	\$12,133	\$31,256
<b>Flexible</b>			
Pouch / bag	\$3,196	\$7,804	\$19,424

<sup>‡</sup> Minor – changes to text and one printing plate only; Medium – changes to text and/or label layout, changes to three printing plates and proofing required; and Major – changes to text and/or label layout, changes to six printing plates, proofing required and changes to packaging shape/size/design

**AFGC considers it reasonable to assume most label changes will fall within the \$5000 to \$15,000 per SKU range. With at least 30,000 SKUs on supermarket shelves and in other retail outlets this equates to an upfront cost of \$150 million to \$450 million.**

In addition there will be costs foreshadowed for menu board labelling. These have been estimated to be in the region of \$28 million.

AFGC has been unable to ascertain a cost for the vending machine labelling as this industry is served by many small contractors companies who are not members of the AFGC.

Nevertheless is clear that the cost implications on industry of the Review’s recommendations, if they are adopted, will be substantial. **AFGC also makes the point that resources within the food industry and packaging industry are limited, and may not be available if sweeping label changes across the whole food industry are required.**

## 7.2. Specific Examples of the cost of Labelling Changes.

### Example 1. Single, moderate label change

A detailed estimate of the cost of a single label change on a beverage product has been provided to AFGC by a member company. In the estimation the following assumptions have been made:

1. a moderate redesign of the label is required due to the inclusion of an additional mandated labelling statement;
2. two years will be provided to introduce the changes. During that time the company routinely changes 33% of all artwork. The estimates have discounted the artwork costs by 33%;

3. no allowance has been made for loss of packaging line efficiency when running back labellers or additional labeller staff; and
4. costs include ‘one-off’ capital expenditures and on on-going costs.

**Table 5. Costs to incorporate a single additional element in a beverage label.**

Costs	Beverage Labels	Cartons, multiple pack labels
<b>Capital Expenditure</b>		
Australia	\$780	\$780
New Zealand	\$290	\$290
<b>Artwork</b>		
Australia	\$350	\$700
New Zealand	\$350	\$700
33% Discount	\$230	\$480
<b>One off Total</b>	<b>\$1,540</b>	<b>\$1990</b>
<b>Annual Ongoing Costs</b>		
Australia	\$3,200	\$3,200
New Zealand	\$600	\$600
<b>Ongoing Total Costs</b>	<b>\$3,800</b>	<b>\$3,800</b>
<b>First Year Total Costs</b>	<b>\$5,340</b>	<b>\$5,790</b>

If these changes were to be implemented across the whole of the company’s product portfolio the total additional costs for the company in the first year are estimated to be \$6.2 million. Ongoing additional costs will be \$4.2 million each year.

### Example 2. Menu Board Labelling in Chain Restaurants

The Review proposed mandatory labelling of menu boards in chain restaurants for nutrition and GM declarations. Due the great variety of menu board displays in quick service restaurants and similar food outlets it is not possible to precisely estimate the cost of full implementation. Based on feedback from AFGC members, however, it is anticipated to be in the region of \$3,500 to \$4,500 per restaurant.

AFGC estimates there are in excess of 8,000 businesses nationwide which would be affected by the mandatory requirements. **A potential impact of this legislation is in excess of \$28 million for the label changes alone.** Ongoing costs will be also be incurred, particularly if requirements to label GM foods or meal components is required. It should be recognised that much of these costs will fall onto the small to medium enterprise sector as many chain restaurant outlets are owned and operated by franchisees.

#### Recommendation

**AFGC recommends that prior to any policy announcement made in response to the Review the Government confirms comprehensive Regulatory Impact Statements will be an indispensable pre-requisite for mandatory labelling requirements originating from the Review.**

## 8. NEXT STEPS FROM THE REVIEW

It is unfortunate that the Review did not provide a clear view as to the future of labelling regulatory policy in Australia and New Zealand. **AFGC is keen, however, that at all prominent controversies within the food labelling debate are brought to a conclusion.** AFGC therefore calls upon Government to set some clear labelling policy directions in its response. Those directions should include:

1. a continued commitment to
  - a. a regulatory reform agenda seeking ways to streamline standards setting and reduce the regulatory burden on industry;
  - b. the COAG's *Principles and Guidelines for National Standard Setting and Regulatory Action*; and
  - c. a national uniform approach to standard setting through the processes of FSANZ whereby proposed amendments to the FSC are fully consulted, based on the best scientific evidence and supported by robust Regulatory Impact Statements;
2. a clear statement of the policy framework under which food labelling will sit detailing
  - a. the scope of food labelling regulation under each relevant legislation (i.e. *FSANZ Act 1991*, *Competition and Consumer Act 2010* ect.);
  - b. when each type of regulatory instrument (full regulation, co-regulation, industry codes) would be appropriate; and
  - c. the primary areas to be dealt with by food labelling regulation (i.e. food safety, preventive health, new technology and consumer values);
3. recognition that food labelling regulation is one of many policy options for addressing key issues and there is already a strong track record of Government working closely with industry and other stakeholders in initiatives without regulation, particularly in the preventive health space; and
4. acknowledgement of the role food industry plays in providing information about how its innovative food products can contribute to healthy diets and lifestyles, and the critical importance of continued profitability in the food industry to provide for further innovation in response to evolving nutritional wisdom.

AFGC looks forward to liaising closely with Government to identify and support the best of current labelling practices, and make changes to those areas of labelling which fall short of providing the best outcome for consumers, regulators and industry.

## Appendices

### APPENDIX 1. AFGC RESPONSES TO RECOMMENDATIONS.

Report Recommendations	AFGC comment
<b>Policy Drivers of Food Labelling</b>	
<p><b>Recommendation 1:</b> That the <i>Food Standards Australia New Zealand Act 1991</i> be amended to include a definition of public health to the effect that: ‘Public Health is the organised response by society to protect and promote health, and to prevent illness, injury and disability’.</p>	<p><b>SUPPORTED:</b>            A clear definition of “Public Health” within the FSANZ Act to help guide standards development would be beneficial. The wording will need to be carefully considered reflecting the hard boundaries for food regulation. This is important for food regulatory agencies – it guides what they can and cannot do which is critical for a food regulatory agency, particularly those which have a high degree of independence. For example AFGC would require the words “Public health, <i>for the purpose of food standard development</i>, is the organised response by society to protect and promote health, and to prevent illness, injury and disability, <i>associated with the consumption of food based on scientific evidence related to physiological outcomes, risk based assessment of consequences, technical practicalities of implementation and overall cost-benefit analysis</i>“ in the proposed definition.</p>
<b>Principles and Criteria</b>	
<p><b>Recommendation 2:</b> That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.</p> <p>The modes of intervention should be mandatory for food safety; a mixture of mandatory and co-regulation for preventative health, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures; and mandatory with time limits for new technologies. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure or the ineffectiveness of self-regulatory schemes.</p>	<p><b>SUPPORTED:</b>            The hierarchical concept applied to food labelling issues is supported as it based on relative risk and links this to levels of regulation – that is it proposes a proportionate regulatory response.</p> <p>AFGC considers many of the subsequent recommendations can be mapped onto this framework and used to determine both the level of regulatory response and the appropriate regulatory agency.</p>
<p><b>Recommendation 3:</b> That once the case for a labelling standard has been established and becomes part of the Food Standards Code, sufficient resources be allocated to ensure that it is effectively monitored and enforced.</p>	<p><b>SUPPORTED:</b>            AFGC considers the monitoring of the effectiveness of regulation and appropriate enforcement is critical to the integrity of the food regulatory system. Whilst AFGC strongly supports a “risk analysis” approach for the</p>

	development of standards and codes, poor compliance with standards addressing “low risk” issues is almost as damaging to the integrity of the regulatory system as non compliance with standards addressing “high risk” issues
<b>Recommendation 4:</b> That consumer protection concerns be accorded a high priority by the relevant government agencies and complaints be properly processed and resolved.	<b>NOT SUPPORTED:</b> AFGC supports government agencies prioritizing all regulation and its enforcement including consumer protection regulation on the basis of risk. Consumer complaints should be dealt with also on this basis. AFGC cannot support, therefore, a <u>blanket high priority</u> being assigned to all consumer protection issues. It is potentially a substantial waste of government resources better spent elsewhere.
<b>Recommendation 5:</b> That information on food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population.	<b>NOT SUPPORTED:</b> This recommendation is <u>impractical</u> . AFGC supports this <u>in principle</u> but notes that not <u>all</u> of the population can be catered for on food labels. Comprehensibility is determined by a number of factors including, for example, literacy. AFGC supports the notion that <u>the majority</u> of consumers should be able to understand food labels. This issue is best addressed by industry codes.

### Public Health and Food Safety

<b>Recommendation 6:</b> That the food safety elements on the food label be reviewed with the aim to maximise the effectiveness of food safety communication.	<b>SUPPORTED:</b> Food safety is paramount. AFGC supports a review to consider the role of food labelling in communicating maximising food safety.
<b>Recommendation 7:</b> That there be more effective monitoring and enforcement of the existing requirements in the Food Standards Code to provide mandatory warning and advisory statements and allergen declarations on packages of food not for retail sale, foods for sale at restaurants and other food outlets, foods from mobile food vendors and vending machines, and foods for catering purposes.	<b>CONDITIONAL SUPPORT:</b> AFGC supports the need for important safety information to be readily available for consumers in retail outlets. <u>Conditional</u> support is therefore provided for this recommendation. The extent of the issue needs to be determined in order to guide appropriate resource allocation by jurisdictions.
<b>Recommendation 8:</b> That the Voluntary Incidental Trace Allergen Labelling system be explored as a possible supplementary model to manage food label declarations relating to the adventitious presence of allergens in foods.	<b>NOT SUPPORTED:</b> This recommendation is superfluous. This is already a voluntary industry initiative. Clarification is required on whether this recommendation relates to the use of VITAL as being supplementary to regulation. The industry would be concerned with adopting it as a full regulatory measure due to a loss of flexibility. This would also be counter to the current approach of food safety regulations which are less prescriptive.



<p><b>Recommendation 9:</b> That a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label. Key aspects of the framework to be:</p> <ul style="list-style-type: none"> <li>a. the provision of food safety and nutrition information and education strategies to protect and promote the health of the population, including articulated roles for food label elements;</li> <li>b. the encouragement of the provision of healthy foods within the food supply to facilitate healthy diets;</li> <li>c. the setting and application of nutrient criteria and dietary guidance;</li> <li>d. the facilitation of social and other research to improve understanding of how label information is used and its impact on food selection, eating behaviours and the food supply;</li> <li>e. the establishment of monitoring and surveillance systems for dietary/nutrition practices that include the use and understanding of food labels.</li> </ul> <p>Such a policy should be developed as a priority, within the framework of the governments' preventative health agendas and cognisant of the present Australian initiatives on food security and a national food plan.</p>	<p><b>CONDITIONAL SUPPORT:</b> AFGC will <u>only</u> support the development of a Nutrition Policy as a central, fully integrated element of an overarching Government National Food Plan. The objective of the Nutrition Policy would be to optimise the nutrition of Australians thereby improving their health status. This is consistent with the accepted definitions of food security based on accessibility and affordability of nutritious foods meeting societal and cultural needs. This requires an extensive, robust and profitable food manufacturing industry in Australia supported by a National Food Plan.</p>
<p><b>Recommendation 10:</b> That the <i>Food Standards Australia New Zealand Act 1991</i> be amended to require Food Standards Australia New Zealand to 'have regard' to the comprehensive Nutrition Policy when developing or reviewing labelling standards.</p>	<p><b>NOT SUPPORTED:</b> This recommendation is redundant. AFGC agrees with the sentiment but considers the other objectives within the FSANZ Act (if adhered to) render this reference to the Nutrition Policy unnecessary.</p>
<p><b>Recommendation 11:</b> That industry develop in consultation with government, medical authorities and relevant consumer organisations a voluntary code of practice and education initiatives to enable consumers to quickly identify label information relating to additives, colourings and flavourings that are of agreed medical priority for sensitive consumers.</p>	<p><b>NOT SUPPORTED:</b> Additive permissions are fully regulated to ensure levels in foods are safe for consumption. Consumers who have an interest in food additives are likely to actively seek out information related to these components including "decoding" of the current codes for food additives. Moreover the current regulatory approval system also considers whether additional labelling is required for consumers. The case has not been made for additional work in this area.</p>
<p><b>Recommendation 12:</b> That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms 'added sugars' and 'added fats' and/or 'added vegetable oils' be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).</p>	<p><b>NOT SUPPORTED.</b> This recommendation was presented on the basis of providing <u>nutritional</u> information to consumers. Such labelling requirements are, however, too prescriptive removing flexibility for industry in the use of food ingredients which in nutritional values are virtually identical. This will impose costs for industry and consumers and is not enforceable. In addition the approach is inconsistent with overseas labelling requirements potentially leading to challenge under Australia's obligations to World Trade Organization agreements.</p>
<p><b>Recommendation 13:</b> That mandatory declaration of all trans fatty acids above an agreed threshold be introduced in the Nutrition Information Panel if manufactured <i>trans</i> fatty acids have not been phased out of the food supply by January 2013.</p>	<p><b>NOT SUPPORTED</b> The industry has been advised constantly by FSANZ that there is <u>no public health issue</u> in Australia regarding the levels of <i>trans</i>-fats in the diet as levels are already very low in food</p>

	products and trending towards zero.
<b>Recommendation 14:</b> That declaration of total and naturally occurring fibre content be considered as a mandatory requirement in the Nutrition Information Panel.	<b>NOT SUPPORTED:</b> AFGC does not consider there is significant evidence supporting the concept that “naturally occurring fibre” has more beneficial attributes than other forms of fibre, although different fibres do have different effects.  Moreover, the concept has no scientific basis making determination of “naturally occurring fibre” in foodstuffs technically impossible. This will lead to enforcement difficulties.
<b>Recommendation 15:</b> That voluntary declaration of potassium content in the Nutrition Information Panel be actively considered by industry. If nutritional policy guidance recommends the reduction in consumption of potassium for at-risk population groups in the future, disclosure of potassium in the Nutrition Information Panel should become mandatory.	<b>WILL CONSIDER:</b> The Review recommended this on the basis of potassium being a “risk associated” nutrient for individuals with renal disease. They failed to note however that higher levels of potassium in ratio to sodium in the diet is considered beneficial to moderate hypertension. The public health benefits associated with this recommendation need to be demonstrated. There are also practical difficulties in obtaining this information. Food analysis is complex and sourcing information from international suppliers is difficult.
<b>Recommendation 16:</b> That social research be undertaken to determine effective mechanisms to present sodium/salt information on food labels to facilitate consumers’ understanding and use of this information.	<b>SUPPORTED</b> AFGC supports further determining consumer understanding of sodium and salt on the label. AFGC advises that some work in this regard has been conducted overseas which may be drawn upon. Any change should be consistent with international practice. AFGC would welcome the opportunity to provide input into the design of the research.
<b>Recommendation 17:</b> That the declaration in the Nutrition Information Panel of amount of nutrients per serve be no longer mandatory unless a daily intake claim is made.	<b>NOT SUPPORTED.</b> Both values are important tools to assist consumers with their food selection.
<b>Recommendation 18:</b> That declaration of energy content of standardised food items on the menu/menu boards or in close proximity to the food display or menu be mandatory in chain food service outlets and on vending machines. Further, information equivalent to that provided by the Nutrition Information Panel should be available in a readily accessible form in chain food service outlets.	<b>NOT SUPPORTED</b> AFGC supports energy declaration on menu boards and food displays as required by the recent NSW regulation and considers this should be the basis of national regulation. AFGC did not consider it necessary for national regulation to be developed, but rather this issue would have been better handled by an industry code. AFGC notes many Quick Service Restaurants already provide nutrition information in their stores and does not support this becoming a mandatory requirement. AFGC <u>does not</u> support the extension of information to vending machines based on practicalities. There are rarely, if ever, ‘standardised’ food items in vending machines – the mix can and does vary by outlet and other factors including availability, turnover, pricing etc.. The companies who own the machines do not necessarily control their inclusions, which

	<p>are often managed by independent operators (individuals and small businesses) who may change the contents at any time. The nutrition information, including energy content, is included on the packages of all products bought via vending machines, giving consumers the same access to information as in the supermarket. Although this information is obtained after purchase (but before consumption), the products are essentially no different to products that the consumer is familiar with from the supermarket or store.          It is highly unlikely that a Regulatory Impact Statement would support this recommendation.</p>
<p><b>Recommendation 19:</b> That a responsive regulatory approach to the use of simple words and terms that may infer health implications be commenced, with the food industry working with Food Standards Australia New Zealand to develop a Code of Practice covering consistent use of definitions for such words and terms, with a view to their use being restricted if appropriate constraint is not implemented.</p>	<p><b>NOT SUPPORTED</b>          AFGC has already determined to provide advice on the use of terms such a 'pure', 'natural', and related descriptors in the AFGC Code of Practice for Food Labelling and Promotion. AFGC will consult with FSANZ and other stakeholders. It is <u>not necessary</u> for FSANZ to have a greater role.</p>
<p><b>Recommendation 20:</b> That the Standard for nutrition, health and related claims on food labels which reflects agreed public health goals be finalised and that it include the following:</p> <ul style="list-style-type: none"> <li>a. a hierarchy of substantiation of claims at the various levels, that would encompass use of defined nutrition words and terms, pre-approved relationships, authoritative sources, systematic review and pre-market assessment and approval;</li> <li>b. a requirement that all foods that carry a nutrition, health and related claim comply with an agreed nutrient profiling system;</li> <li>c. a requirement that the presence of a nutrition, health and related claim triggers relevant information disclosures in the Nutrition Information Panel or ingredients list; and</li> <li>d. a requirement that the presence of a general or high level claim triggers display of standardised front-of-pack label information.</li> </ul>	<p><b>SUPPORTED</b>          Industry has long advocated for the right to make truthful, substantiated claims on food packs. Any regulatory system must align to the reform agenda set by COAG. In addition the hierarchal principles developed by the Review determine the appropriate regulatory measure.</p> <p><b>SUPPORTED</b></p> <p><b>NOT SUPPORTED</b>          AFGC <u>strongly opposes</u> nutrient profiling as a basis for assessing foods for regulating nutrition, health and related claims. It is <u>unscientific</u>.</p> <p><b>NOT SUPPORTED</b>          The recommendation is redundant as this is already a requirement</p> <p><b>SUPPORT IN PRINCIPLE</b>          AFGC will consider this recommendation with support dependent upon the type of labelling prescribed. AFGC will <u>not</u> support this requirement triggering a traffic light front-of-pack labelling system.</p>
<p><b>Recommendation 21:</b> That applications for trade names and trademarks be scrutinised by the relevant agencies to identify and reject words and devices that have the effect of inferring health implications that are otherwise prohibited under the Food Standards Code.</p>	<p><b>SUPPORT WITH GUIDELINES.</b>          AFGC supports the principle that trade names and trademarks should not in effect make unsubstantiated claims about a food product. AFGC would not support any regulated nutrient profiling system being used to approve trade names. This measure would potentially affect the Heart Tick and Coeliac Society endorsements.</p> <p>Notwithstanding this support there will be</p>

	<p>practical issues which will need to be addressed such as treatment of existing trade names and trademarks.</p> <p>Another issue to be determined is whether a pre-market approval or post-market enforcement approach would apply.</p>
<p><b>Recommendation 22:</b> That mandatory messages supporting preventative health strategies may be instigated by governments, provided the following conditions are met:</p> <p>a. substantiation requirements are fulfilled — the epidemiological evidence is strong;</p> <p>b. the message is consistent with the comprehensive Nutrition Policy;</p> <p>c. food labelling is an appropriate response to the problem; and</p> <p>d. the label is one part of a multifaceted campaign.</p>	<p><b>CONDITIONAL SUPPORT</b> AFGC supports such messages when there is strong evidence of a public health need and the effectiveness of the message in ameliorating it. Any regulatory measure must still meet the test of good regulatory practice. Moreover the use of food labelling for such messaging must be aligned with the objectives of FSANZ, and particularly an appropriate definition of public health.</p> <p><b>SUPPORT</b></p> <p><b>CONDITIONAL SUPPORT</b> AFGC only supports a nutrition policy as a part of a National Food Plan</p> <p><b>SUPPORT</b></p> <p><b>SUPPORT</b></p>
<p><b>Recommendation 23:</b> That a consistent, seamless regulatory approach for nutrition, health and related claims be adopted for food, complementary medicines and dietary supplements.</p>	<p><b>SUPPORT IN PRINCIPLE</b> AFGC supports alignment of regulatory requirements across the food :drug interface. Notwithstanding that, foods are not drugs and vice versa and different regulatory approaches are required.</p>
<p><b>Recommendation 24:</b> That generic alcohol warning messages be placed on alcohol labels but only as an element of a comprehensive multifaceted national campaign targeting the public health problems of alcohol in society.</p>	<p><b>SUPPORTED</b> There already exist high levels of awareness across the community that high levels of alcohol consumption are potentially harmful. Through DrinkWise, the alcohol industry has in place various initiatives that form part of a multifaceted national industry-led campaign. These include a voluntary initiative under which DrinkWise and alcohol producers have committed to place generic &amp; specific warning messages on alcohol labels. These warning messages will be supported by DrinkWise's ongoing educational campaigns, as well as educational materials at point of sale. An industry scheme has more adaptability than mandatory regulation. This voluntary industry scheme should be given time for monitoring &amp; evaluation alongside other national industry &amp; government initiatives targeting the public health problems of excessive or irresponsible consumption of alcohol</p>
<p><b>Recommendation 25:</b> That a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages, as support for ongoing broader community education.</p>	<p><b>SUPPORT IN PRINCIPLE</b> The voluntary alcohol industry initiative committed to by alcohol producers &amp; DrinkWise includes warning messages about the risks of consuming alcohol while pregnant. Across the alcohol industry, different manufacturers plan to use worded messages and symbols which will</p>

	<p>give the opportunity to measure their relative effectiveness in the Australian market. A voluntary scheme will provide greater flexibility to explore different options for pregnancy warning messages and assess the impact on consumers' behaviour. This voluntary industry scheme should be given time for monitoring &amp; evaluation before any proposal for mandatory pregnancy warning messages is considered.</p>
<p><b>Recommendation 26:</b> That energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products.</p>	<p><b>NOT SUPPORTED</b>          The current position, where alcohol producers can voluntarily choose to display full Nutrition Information Panels on standardised alcoholic beverages, should be maintained. The declaration of energy content alone does not fully inform consumers about all relevant nutritional information regarding alcoholic beverages. The combined effect of Recommendation 26 and the draft Nutrition, Health and Other Claims Standard would be to prohibit the industry from displaying NIP information for standard beers or wines on labels or on websites. Nutrition information presently on websites would be removed and not be available to consumers. This is contrary to the principle of the FSANZ Act that the consumers have a right to know.</p>
<p><b>Recommendation 27:</b> That drinks that are mixtures of alcohol and other beverages comply with all general nutrition labelling requirements, including disclosure of a mandatory Nutrition Information Panel.</p>	<p><b>SUPPORT IN PRINCIPLE</b>          As above, any disclosure of nutrients on alcoholic beverage products should be via a full Nutrition Information Panel. The nutritional similarities between ready-to-drink alcoholic beverages (mixtures of alcohol and other beverages) and other foods should be recognised. Unlike fermented alcoholic products, the ingredients in ready-to-drink alcoholic beverages are simply mixed to create the final product. The disclosure of a Nutrition Information Panel on ready-to-drink alcoholic beverages would ensure that consumers are given the same nutritional information as is disclosed on the non alcoholic beverages which provide the "mixer" base for these products.</p>



New Technologies

<p><b>Recommendation 28:</b> That as a general principle all foods or ingredients that have been processed by new technologies (i.e., all technologies that trigger pre-market food safety assessments) be required to be labelled for 30 years from the time of their introduction into the human food chain; the application of this principle to be based on scientific evidence of direct impact on, or modification of, the food/ingredient to be consumed. At the expiry of that period the mandatory labelling should be reviewed.</p>	<p><b>NOT SUPPORTED.</b> This is unnecessarily prescriptive and excessive. This recommendation is founded on the view that potential safety issues, if they exist, will become clear after 30 years. This argument is flawed and is in conflict with the principle that new technologies need to be considered safe in order to be approved for use in the food supply. This is a significant deterrent to investment in R&amp;D and product development in Australia.</p>
<p><b>Recommendation 29:</b> That only foods or ingredients that have altered characteristics or contain detectable novel DNA or protein be required to declare the presence of genetically modified material on the label.</p>	<p><b>NOT SUPPORTED</b> This issue was explored extensively during the development of the current standard. The exemptions were developed for good reasons, and circumstances have not altered rendering them inappropriate. Exemptions for adventitious presence and GM flavourings should remain.</p>
<p><b>Recommendation 30:</b> That any detection of an adventitious genetically modified event be followed by a period of monitoring and testing of that food or ingredient.</p>	<p><b>NOT SUPPORTED.</b> This adds unnecessary cost for testing. The Recommendation fails to appreciate the complexity of testing for components at very low levels and the expense of robust sampling plans to provide conclusive data.</p>
<p><b>Recommendation 31:</b> That foods or ingredients with flavours containing detectable novel DNA or protein not be exempt from the requirements to declare the presence of genetically modified material on the label.</p>	<p><b>NOT SUPPORTED</b> There is no justification provided to remove current exemption for labelling of low GM levels (1ppm).</p>
<p><b>Recommendation 32:</b> That foods or ingredients that have been genetically modified and would require declaration if labelled be declared on menu/menu boards or in close proximity to the food display or menu in chain food service outlets and on vending machines.</p>	<p><b>NOT SUPPORTED.</b> Restaurants food service outlets currently have obligations to provide information on request. Specific labelling would be problematic. Menu boards typically present meals – not individual products or ingredients. This will add complexity to operations with additional cost for no clear additional consumer benefit.</p>
<p><b>Recommendation 33:</b> That governments ensure effective monitoring of labelling requirements in the Food Standards Code relating to genetically modified foods or ingredients through support for sufficient Australian and New Zealand laboratories, observing world best practice protocols, and with the necessary resources and analytical skills.</p>	<p><b>NOT SUPPORTED.</b> This is an issue that should be dealt with by NATA and NMI. Both organisations, and other testing laboratories respond to the market demand for GM testing. There is no sound argument of government subsidising capacity and capability in testing procedures if there is no demand for the testing. This is particularly so if there is no public health and safety reason behind it.</p>
<p><b>Recommendation 34:</b> That the requirement for mandatory labelling of irradiated food be reviewed.</p>	<p><b>SUPPORTED.</b> Labelling of irradiated food should be reviewed against the hierarchal framework recommended by the Review.</p>
<p><b>Recommendation 35:</b> That Food Standards Australia New Zealand and other relevant bodies develop as a matter of urgency a standard for regulating the presence of nanotechnology in the food production chain, consistent with the recommendations in this Report relating to new technologies.</p>	<p><b>NOT SUPPORTED</b> AFGC does not support the 30 year rule for the labelling of any technology – it is arbitrary with no logical basis. AFGC supports appropriate labelling based on the Review hierarchal risk-based criteria and the current requirement for pre-market approval.</p>



Consumer Values Issues

<p><b>Recommendation 36:</b> That Food Standards Australia New Zealand consider adopting, by reference in the Food Standards Code, values-based definitions and/or standards relating to specific food production methods and processes, if requested by industry, to achieve consistency of definitions.</p>	<p><b>NOT SUPPORTED.</b> AFGC considers in most cases simple dictionary definitions supported by industry codes will suffice. There may examples where a formal regulated definition would be of value. If this is the case, Standards Australia is a more appropriate agency to develop definitions rather than FSANZ with adoption into the FSC. Alternatively, an industry code could be developed.</p>
<p><b>Recommendation 37:</b> That the relevant livestock industries consider the benefit of establishing agreed standards under the auspices of Standards Australia or Standards New Zealand for terms related to animal husbandry (e.g., 'free range', 'barn laid' and 'caged' in the case of poultry).</p>	<p><b>SUPPORT IN PRINCIPLE.</b> Livestock industries are in the best position to standardise these terms – and it is likely they will need to be done on a species by species basis. ACCC and consumer protection legislation will provide appropriate safeguards to ensure the labelling terms developed do not mislead consumers, but the AFGC does not consider the ACCC needs to take an active role in the development of descriptors.</p>
<p><b>Recommendation 38:</b> That the value of industry-initiated self-regulatory intervention be recognised and that industry in collaboration with special interest groups further develop and apply a responsive and more structured self-regulatory approach to consumer values issues that incorporates:</p> <ul style="list-style-type: none"> <li>a. the role that voluntary codes of practice can play in relation to the evolution of standard definitions for values-based claims;</li> <li>b. the role that certification schemes can play in effectively communicating values-based messages; and</li> <li>c. the development of agreed standards through existing frameworks such as International Organization for Standardization, Standards Australia or Standards New Zealand.</li> </ul>	<p><b>SUPPORTED</b> AFGC supports this recommendation and seeks a greater role and recognition of the work that industry already undertakes in this area. Industry codes have a role as part of the suite of risk base regulatory measures.</p> <p><b>SUPPORTED</b></p> <p><b>SUPPORTED</b></p>
<p><b>Recommendation 39:</b> That a monitoring regime for self-regulatory measures be established and when evidence of systemic failure to provide accurate and consistent values-based information to enable consumers to make informed choices is found, a more prescriptive mode of regulation is triggered.</p>	<p><b>SUPPORTED:</b> AFGC supports the requirement for the monitoring and reporting of industry codes. This is the responsibility of the supporting industry bodies which should arrange for periodic independent review.</p>
<p><b>Recommendation 40:</b> That Australia's existing mandatory country-of-origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale.</p>	<p><b>SUPPORTED:</b> AFGC considers it important that consumers are able to consider country of origin when purchasing these foods.</p>
<p><b>Recommendation 41:</b> That mandatory requirements for country-of-origin labelling on all food products be provided for in a specific consumer product information standard for food under the <i>Competition and Consumer Act 2010</i> rather than in the Food Standards Code.</p>	<p><b>SUPPORTED:</b> AFGC agrees that country of origin requirements are more appropriate provided for under consumer protection legislation.</p>
<p><b>Recommendation 42:</b> That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.</p>	<p><b>NOT SUPPORTED:</b> AFGC does <u>not</u> support an approach based on proportion of total weight of ingredients as this simplistic and not related to consumers' sensory perception of products or the worth of ingredients. AFGC would support a review of the</p>

country of origin provisions to improve provision of this information to consumers. AFGC does not support replacing the “*Made In*” statement with a “*Made with XX Ingredients*” statement, as this fails to support the Australian manufacturing sector.

## Presentation

<p><b>Recommendation 43:</b> That the Perceptible Information Principle be used as a guide for labelling presentation to maximise label comprehension among a wide range of consumers.</p>	<p><b>SUPPORTED.</b>          AFGC agrees that a set of principles, rather than prescriptive requirements, guiding food industry on format and presentation of information is valuable to ensure legibility and comprehensibility of labels. AFGC will consider development of a set of principles within the AFGC Code of Practice on Food Labelling and Advertising.</p>
<p><b>Recommendation 44:</b> That a minimum font size of 3.5mm in an open font style in mixed case be applied for mandated information, with the exception of small package sizes where the minimum font size should be 1.5mm.</p>	<p><b>NOT SUPPORTED:</b>          This level of prescription is inappropriate.</p>
<p><b>Recommendation 45:</b> That a set of guidelines be developed in consultation with industry that includes reference to other presentation factors such as letter and line spacing, text justification and stroke width.</p>	<p><b>NOT SUPPORTED:</b>          This recommendation is redundant. FSANZ already has user guides providing this type of support to the FSC provisions regarding legibility<sup>44</sup>. AFGC agrees that guidelines may be of value to industry and will consider development of a set of principles within the AFGC Code of Practice on Food Labelling and Advertising.</p>
<p><b>Recommendation 46:</b> That a minimum contrast level of 70% for mandated information be stipulated in the Food Standards Code.</p>	<p><b>NOT SUPPORTED:</b>          This level of prescription is inappropriate.</p>
<p><b>Recommendation 47:</b> That warning and advisory statements be emboldened and allergens emboldened both in the ingredients list and in a separate list.</p>	<p><b>NOT SUPPORTED:</b>          This is managed by current industry codes which are well supported and provide the flexibility for companies to use several alternatives, not one fixed requirement. It is not necessary to adopt it into regulation.</p>
<p><b>Recommendation 48:</b> That industry be encouraged to develop a set of guidelines relating to the co-location of mandatory health information presented in a standardised manner on the label. Government should facilitate this process through the provision of appropriate resources and expertise.</p>	<p><b>NOT SUPPORTED:</b>          This foreshadows the redesign the label of most packaged foods at huge cost to industry if it was widely adopted. The AFGC will examine the practicalities of developing guiding principles to good label design for the display of mandatory health information.</p>
<p><b>Recommendation 49:</b> That the development of an automated label assessment tool be investigated that can gauge a label’s compliance with mandated legibility requirements and those stipulated in relevant voluntary codes.</p>	<p><b>CONSIDER:</b>          AFGC is uncertain of the value of this recommendation and the body of the report lacks sufficient detail to make a judgement at this stage. It is uncertain how this would apply to imports.</p>
<p><b>Recommendation 50:</b> That an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities.</p>	<p><b>NOT SUPPORTED:</b>          AFGC and food industry has already introduced an effective front-of-pack labelling system – the Daily Intake Guide which includes the</p>

<sup>44</sup> <http://www.foodstandards.gov.au/foodstandards/userguides/legibilityrequiremen1401.cfm>

	interpretive amounts foods contribute to an average adult's diet. AFGC will not support any form of traffic light labelling.
<b>Recommendation 51:</b> That a multiple traffic lights front-of-pack labelling system be introduced. Such a system to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory.	<b>NOT SUPPORTED:</b> AFGC is disappointed and surprised that the Review failed to recognise the extent of uptake and success of the Daily Intake Guide given the extensive information provided to the Review. AFGC does not support traffic light labelling schemes and opposes strongly any mandatory scheme linked to claims. This effectively penalises companies seeking to differentiate products on the health platform through innovative reformulation. Moreover there is potential for consumer confusion through a conflict between interpretive schemes i.e. the Heart "tick" appearing on products with "red" traffic lights.
<b>Recommendation 52:</b> That government advice and support be provided to producers adopting the multiple traffic lights system and that its introduction be accompanied by comprehensive consumer education to explain and support the system.	<b>NOT SUPPORTED:</b> AFGC opposes traffic light labelling schemes
<b>Recommendation 53:</b> That ongoing monitoring and evaluation of the multiple traffic lights system be undertaken to assess industry compliance and the effectiveness of the system in improving the food supply and influencing consumers' food choices.	<b>NOT SUPPORT:</b> AFGC opposes traffic light labelling schemes
<b>Recommendation 54:</b> That chain food service outlets across Australia and New Zealand be encouraged to display the multiple traffic lights system on menus/menu boards. Such a system be mandatory where general or high level health claims are made or equivalent endorsements/trade names/marks are used.	<b>NOT SUPPORTED:</b> AFGC and the AFGC Quick Service Restaurant forum opposes traffic light labelling schemes. There is potential for consumer confusion through a conflict between interpretive schemes i.e. the Heart "tick" appearing on products with "red" traffic lights
<b>Recommendation 55:</b> That any beverages containing alcohol be exempt from nutrition-related front-of-pack labelling requirements.	<b>SUPPORTED</b> The exemption of alcoholic beverage products from any mandatory nutrition-related front-of-pack labelling requirements. The current position regarding Nutrition Information Panels, where alcohol producers can voluntarily choose to display full Nutrition Information Panels on standardised alcoholic beverages, should be maintained.
<b>Recommendation 56:</b> That the potential of new information technologies be considered by consumer organisations, industry and government to provide extended product labelling for non-mandatory information.	<b>SUPPORTED:</b> AFGC and its member companies are already exploring the use of mobile scanning devices.

**Compliance and Enforcement**

<p><b>Recommendation 57:</b> That monitoring and enforcement of food labelling requirements of the Food Standards Code (accuracy as well as the presence of labelling information) be considered equally important as other aspects of the Food Standards Code and the responsible agencies be given the appropriate level of resources to meet their obligations.</p>	<p><b>NOT SUPPORTED:</b>                  The Review Panel itself noted a “hierarchy of risk”. Enforcement resource allocation must be made on the basis of risk assessment.</p>
<p><b>Recommendation 58:</b> That the Model Food Provisions and the food acts of the jurisdictions be amended to allow a more versatile range of enforcement provisions, such as the power to make orders or require user-paid compliance testing consequent on a breach or impose enforceable undertakings in relation to non-compliant labelling.</p>	<p><b>NOT SUPPORTED:</b>                  AFGC supports a review of the Model Food Act provisions regarding enforcement which would lead to more uniform, consistent enforcement of food standards. AFGC does <u>not</u> support the cost shifting to industry of this recommendation</p>
<p><b>Recommendation 59:</b> That consumer protection concerns related to food labelling be accorded a high priority by the relevant consumer protection agencies (Australian Competition and Consumer Commission, New Zealand Commerce Commission, and State and Territory consumer protection agencies) and complaints be processed and resolved in a timely and transparent manner.</p>	<p><b>SUPPORTED:</b>                  AFGC considers all agencies which have a responsibility for food labelling regulation must ensure they are implemented effectively</p>
<p><b>Recommendation 60:</b> That food standards always be drafted with the understanding that they are intended to be enforceable legal documents. Where current deficiencies in the labelling requirements have been identified, standards should be re-drafted to make the obligations clear.</p>	<p><b>SUPPORTED:</b>                  Enforceability is a critical condition for the imposition of any regulation.</p>
<p><b>Recommendation 61:</b> That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the <i>Food Standards Australia New Zealand Act 1991</i> to undertake the functions as specified in this Report and more generally to:</p> <ol style="list-style-type: none"> <li>a. be the primary contact for, and source of, food labelling information and advice;</li> <li>b. undertake research into food labelling issues;</li> <li>c. undertake a general educational role in relation to food labelling issues and requirements;</li> <li>d. assist industry to comply with labelling requirements;</li> <li>e. act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;</li> <li>f. monitor and report on food labelling compliance; and</li> <li>g. monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.</li> </ol>	<p><b>SUPPORTED:</b>                  AFGC supports FSANZ being able to provide interpretive guidance to the Food Standards Code which can guide industry in their labelling practices, and jurisdictions in their enforcement approaches.</p> <p>AFGC notes that some of these functions already are the responsibility of FSANZ and should not be duplicated through establishing a separate agency.</p> <p>All that is required is for a small enforcement group to be established to provide central interpretive advice on compliance with regulations. Such a group would have technical and legal expertise.</p>

## APPENDIX 2 – AFGC’S FIRST SUBMISSION TO THE REVIEW; EXECUTIVE SUMMARY

AFGC welcomes the opportunity to make this preliminary submission to the *Review of Food Labelling Law and Policy*.

**AFGC strongly supports the conduct of this Review.** For too long food labelling legislation in Australia has been developed and promulgated in a policy vacuum, frustrating the food industry and disadvantaging consumers.

**As part of the wider COAG business regulation reform agenda** the Review represents an opportunity to establish some key policy principles harmonising the regulatory objectives of all agencies developing labelling standards including FSANZ, TGA, ACCC, NMI and Standards Australia. This will reduce business costs, improve food labelling and benefit consumers.

Issues which the Review should explore in detail include:

- **the role of food labelling in health protection and health promotion.** Precedent, and necessity, have established an unequivocal role for regulating for the former; AFGC considers voluntary labelling approaches are well suited for the latter;
- **best practice policy and regulation** and specifically **evidence and fact based approaches**; proportionate regulatory responses and uniform enforcement to maximise compliance;
- **the role of food labels in creating consumer expectations and encouraging purchase.** Labelling requirements should not discourage purchase but rather assist consumers to make the right purchase to meet their individual needs;
- **the potential impact on international trade** and the need to seek harmonisation in labelling regulation where possible, and compliance with international trade agreements;
- **the track record of the market providing for the needs of sections of the community** in the absence of black letter law; for example Halal, Kosher and organic food;
- **the scope of food labelling policy and regulation** including the extent to which labels stretch beyond the nature of the food and into production and processing matters;
- **the value of voluntary industry codes** as a means of providing a more flexible and responsive mechanism for industry to meet consumer and community needs, when full regulation would be seen as a disproportionate response;
- **the consumers “right to know”** and the ever widening range of information demands, and appropriate food labelling regulatory policy and regulatory responses; and
- **the confusion and misalignment of labelling requirements** and prohibitions at the different regulatory interfaces such as the food:drug interface.

AFGC strongly supports the outcomes from the Review informing the development of a comprehensive and robust food labelling policy to be developed by the Food Regulation Standing Committee.

That Australia currently has black letter laws which both require and prohibit scientifically substantiated truthful information being provided to consumers highlights the need for a food labelling policy, and indicates **two key questions which the Review must answer** vis:

- what is the justification for mandating the provision of information on food labels; and
- what is the justification for prohibiting the provision of information on food labels?

Such a policy is critical to resolving key labelling issues including health claims, front-of-pack labelling and country-of-origin labelling which continue to vex the industry, regulators and the wider community alike.

**Such a policy is also critical to help guide future developments** in the provision of information to consumers through other media including the internet and **extended labelling technologies**, which promise “point of sale” transmission of information about food products through in-store scanners and mobile phone applications.

AFGC will make further submissions to the Review as the consultation progresses.



## APPENDIX 3 - AFGC'S 2ND SUBMISSION TO THE REVIEW; 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;

**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.

## Draft Principles

AFGC presents the following draft principles<sup>45</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.

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<sup>45</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)).

## APPENDIX 4 – AFGC WHITE PAPER ON COUNTRY OF ORIGIN LABELLING

Consumers are showing greater interest in the origins, and indeed the “provenance” of their foods. The reasons vary from a desire to support local farmers and the local economy to perceived or real quality and value. In response industry is seeking ways to differentiate its products to consumers with labelling statements that are accurate and appropriate

The main purpose of mandatory COOL is to give consumers more information about the products they buy. In making the recommendation to adopt mandatory country of origin labelling, Food Standards Australia New Zealand (FSANZ) found from a variety of studies that Australian shoppers were interested in COOL and supporting home-grown businesses and local farmers, and that COOL was necessary in order to make an informed purchasing decision.

Notwithstanding this, the food system is complex, with ingredients often sourced from around the world. The challenge for industry is to ensure that when a food is made predominantly with Australian produce, or alternatives comes from overseas, that it is labelled as such.

Regulators have also determined that the origin of food and their ingredients is a fundamental consumer “right to know”, and as it is a potential “premium” claim, requires a degree of regulation. The challenge for regulators is to craft the legislation in a way to meet consumer expectation without imposing an unnecessary burden on local industry and to ensure that it is enforceable.

### The Problem with COOL

There are three COOL statements which are regulated under consumer protection legislation: ‘Product of...’, ‘Made in...’ and ‘Grown in...’. The rules applying to ‘Product of...’, are clear; while the rules governing ‘Made in...’ and ‘Grown in...’ have the potential to create confusion and misunderstanding for consumers. The ‘Made in Australia’ claim is considered valuable as it recognises the importance of manufacturing in Australia and the consumers desire to support it.

There are concerns over country of origin labelling and the current Trade Practices rules that allow a product to be described as ‘Made in Australia’ when a significant portion of the food may be imported. The current ACCC rules<sup>46</sup> allow as little as 50% Australian cost component to qualify for use of ‘Made in Australia’, and in determining if 50% of the cost of production occurs in Australia costs that are incidental to the manufacture of the food may be included, potentially allowing a product with substantially imported ingredients to be labelled ‘Made in Australia’.

### COOL Legislation

In 1998 Trade Practices legislation was amended to provide safe harbour provisions which apply to country of origin claims. The Australian Competition and Consumer Commission (ACCC) subsequently developed a guideline on the application of country of origin labelling (COOL) statements for the food and beverage industry. Similar COOL provisions are made in the New Zealand Fair Trading Act and have been established based on internationally agreed rules.

‘Product of...’ means that **all** of the product's **significant** ingredients come from the specified country, and all or nearly all of the manufacturing or processing is also carried out in the specified country.

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<sup>46</sup> <http://www.accc.gov.au/content/index.phtml/itemId/306388>

*'Made in...'* means contains ingredients which are substantially transformed in the specified country and at least 50 per cent of the cost of production has been incurred in the specified country. The qualifying terms (with *"local and imported ingredients"* or with *"imported and local ingredients"*) may be applied where the substantial transformation or production costs may vary, for example with seasonal variation and availability of local ingredients.

*'Grown in...'* (added in 2010 under the new Australian Consumer Law) means that 50% or more of the total weight of the goods comprised of ingredients grown and processed in the specified country.

In 2006 COOL became a mandatory requirement for foods and beverages through the adoption of the Trade Practices provisions into the Australia New Zealand Food Standards Code (the Food Code) as an Australia-only standard for packaged foods and beverages and certain unpackaged produce.

While the Trade Practices legislation is focused on ensuring consumer protection from false, misleading and deceptive practices, the Food Code which is adopted under State and Territory Food Acts has a focus on public health and safety, and ensuring consumers have adequate information to make an informed choice. Therefore the resource allocation and prioritisation of enforcement agencies at the ACCC and at State and Territory government agencies responsible for their Food Acts differs significantly.

AFGC supports the Blewett Report recommendation to remove the country of origin labelling provisions from the Food Standards Code, giving sole responsibility to a single agency, the ACCC (or to the New Zealand Commerce Commission), rather than splitting responsibility across various agencies.

### **New Approach For Meaningful Statements**

AFGC considers there is a need for a new and meaningful approach to the use *'Made in...'* statements based on where the production cost directly attributable to the manufacture of the food is incurred, and where the ingredients originate.

One of the primary conditions for *'Made in...'* is that at least 50 per cent of the production cost is incurred in the specified country. All inputs into the manufacturing process are treated as materials entering that process<sup>47</sup>. Other direct manufacturing costs include the cost of materials, labour, and overheads<sup>48</sup>. Packaging and labelling, although not directly part of the food, are considered as part of the cost in making a food.

However there are a number of business costs that are not directly attributed to the production of a food<sup>49</sup> which are currently included in establishing the 50 percent local production cost. AFGC considers that costs not directly associated with the production of a food should not be included in the determining that 50 percent of the cost of the production of the food has been occurred in Australia when determining if the product qualifies to use the *'Made in Australia'* statement.

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47 Inputs into the manufacturing process may include: energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods.

48 Overhead costs directly associated with food production include cost of equipment, testing and inspection, research and development, onsite storage, pest control, cleaning and maintenance and disposal of waste.

49 Indirect costs which may be attributed to food production costs include transport of products, cost of pallets and shipping containers, insurance, accident compensation, phone, fax and internet access, royalty payments, rates and taxes, etc.

The shortcoming of the current *'Made in...'* statement is that under some circumstances it may be used when significant components of the food do not originate in Australia and has the potential to mislead the consumer about the origin of ingredients used in the product. For example, this may occur when ingredients are subject to seasonal availability and may be substituted for imported equivalent ingredients, or minor imported components relate to an essential or significant attribute of a food, despite the rest of the ingredients being largely locally sourced.

The Blewett Review report into Food Labelling Law and Policy<sup>50</sup> acknowledged these concerns, but recommended that the terms *'Product of...'* and *'Made in...'* be replaced with a completely different term based on the proportion by weight of the ingredients or components (excluding water) of Australian origin. Products containing 80% or more Australian content would only require the declaration *'Made of Australian Ingredients'*; while products with 50% - 80% Australian content would state *'Made in Australian and imported ingredients'* and less than 50% Australian content would be labelled *'Made of Imported and Australian ingredients'*.

The AFGC does not consider this approach addresses the concerns of consumers and fails to recognise the importance of the where the product is manufactured. Simply identifying the ingredients as being Australian does not identify product that is not made in Australia, nor does it address the concerns that minor but important components which are of particular interest to consumers may be imported. This new definition also significant varies from the accepted international definitions for origin declarations and will potentially require Australian exports to be re-labelled to meet the accepted international requirements for *'Made in...'* and *'Product of...'*

The AFGC notes that the characterising ingredient is that which is used in the differentiation of the product to the consumer. The percentage of characterising ingredient present if provided in the ingredient list. It may be present in a significant quantity, such as the apple present in an apple pie; or it may be a minor component such as the walnut present in a walnut cake. It is important that consideration be given to the origin of the characterising ingredient and where it is imported the consumer be advised, even though the ingredient may be a minor cost or quantity.

AFGC supports the use of the qualifying statements using the general terms either *'Australian'* or *'local'* and *'imported'* ingredients which focuses on the key information needed by the consumer to make an informed decision. The use of a qualifying statement about the ingredients, in association with the *'Made in...'* statement, ensures that consumers are not misled about the origin of the food. This is necessary because consumers are not aware of the differences between *'Made in...'* and *'Product of...'* and view these terms as synonymous. AFGC considers that the when using the *'Made in...'* statement, the qualifying statement about the ingredients must also be used.

*'Made in...'* means that at least 50 percent of the product costs relevant to the manufacturing of the food are incurred in the specified country, and should include a qualifying statement concerning the origin of the ingredients to improve the clarity and understanding for consumers.

*'Made in...'* should be determined by the costs directly attributed to the manufacture of the food in the specified country and should not take into account those indirect costs associated with the day-to-day running of a business.

The qualifying origin statement for local/imported ingredients, with particular reference to the origin of characterising ingredients or components, should be provided in association with the *'Made in...'* statement should be used in the following manner:

- ◆ Made in Australia with Australian ingredients;

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<sup>50</sup> <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/Content/labelling-logic>



- ◆ Made in Australia with Australian and imported ingredients;
- ◆ Made in Australia with imported and Australian ingredients; and
- ◆ Made in Australia with imported ingredients.

These should be the minimum regulatory requirements, and that companies may provide more specific information as to the nature and origin of the food.

The term ‘*Grown in...*’ relates to the agricultural and horticultural commodities and is defined under Australian Consumer Law. However, the lower threshold of 50% total weight conflicts with the ‘Australian Made Australian Grown’ (AMAG) campaign requirements. Use of the Australian Grown logo requires that each significant ingredient has been grown in Australia and all or virtually all of the production processes have occurred in Australia<sup>51</sup>. The AFGC is concerned that the threshold for ‘*Grown in...*’ is only 50% of the total weight of the goods.

The AFGC supports concerns over the relevance of the ‘*Grown in...*’ statement and calls for a review of the proportion of local content in line with meeting consumer expectations.

### Review of Food Labelling Law and Policy

The Council of Australian Government’s (COAG) Review of Food Labelling Law and Policy was conducted during 2010 to evaluate current food labelling law and policy and make recommendations to governments consistent with the principles that all food labelling laws:

- are evidence based and effective at achieving their policy purpose;
- do not impose unjustifiable regulatory burdens on business; and
- are capable of being enforced in an effective, proportionate and consistent manner<sup>52</sup>.

AFGC proposals presented in this White Paper are consistent with these principles. By maintaining the current “*Product of Australia*” claim *as is*, and modifying the criteria for the “*Made in Australia*” a straight forward basis for clear, concise and non-misleading COOL can be established. Consumers will be able to readily incorporate country of origin into their food products choices. In addition the label claims proposed can be readily enforced by regulatory agencies through audit of company records.

Finally, they provide the flexibility industry requires when sourcing food ingredients based on price, availability and seasonal fluctuations in supply. The combination of mandatory regulatory requirements supported by industry codes is a proportionate regulatory approach which is both effective and resource efficient.

### The Role of Industry Codes

It is appropriate that overt country of origin claims are covered by full regulation, which is supported by interpretive guidelines from the ACCC. Regulation is, however, not well suited to governing all approaches which might be used by companies to indicate the origin of food products. Marketing terms used to describe the attributes of a product may imply that the product has an Australian content, even though this may be a minor element. For example, the use of Australian flags, or depictions of Australian animals as logos or trademarks may imply to the consumer that the food product originates in Australia, or indeed from other countries; or the use of the term ‘Australian Blend’ to indicate it was made for the Australian market yet having little or no Australian content.

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<sup>51</sup> <http://www.australianmade.com.au/logo/>

<sup>52</sup> <http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/home>

Food companies are in the best position to determine how best to devise the country of origin of food products and their ingredients based on the principles described in Section 4 above. For some products it will be obvious; for others an industry labelling code can provide advice, clarity and most importantly consistency across the industry.

AFGC considers there is a role for industry codes to provide further advice to companies on the use of label statements and devices which might be used to depict the origin of food products. This would provide further assurance that industry food labelling and promotional practices are consistent with the objective of providing clear information about the origin of food ingredients to assist consumer choice.

AFGC has recently introduced a *Code of Practice on Food Labelling and Promotion*<sup>53</sup>. It currently provides advice to companies on front-of-pack, allergen and date-mark labelling. Additional advice on appropriate on country of origin labelling complementing regulatory requirements can be readily incorporated within the code's structure and management framework.

### Future of Labelling Information

Today's label technology allows, to some degree, identification of the origin of packaged products based on the barcode number. Barcode identification is allocated by the international not for profit organisation GS1 and based on an agreed global standard.

Information about the product is linked via the barcode to the GS1net database and advances in mobile technology now allow direct transmission of information to consumers through mobile telephones scanning the barcode and accessing databases of product specific data. This technology has the potential to allow consumers to access more detailed information about food products. In this case, information could be provided about the range of countries from which imported ingredients have been sourced for a product.

It would be possible to provide an indicative range of countries from which the principle characterising ingredients are likely to come from using extended label mobile phone technologies.

AFGC considers that mobile phone based extended labelling presents both challenges and opportunities and supports the voluntary use of additional off-label information being provided by manufacturers using mobile phone applications direct to consumers.

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<sup>53</sup> <http://www.afgc.org.au/industry-codes/cop-food-labelling-a-promotion.html>

## APPENDIX 5 - FANZ NUTRIENT PROFILING SCORING CRITERIA SCHEME

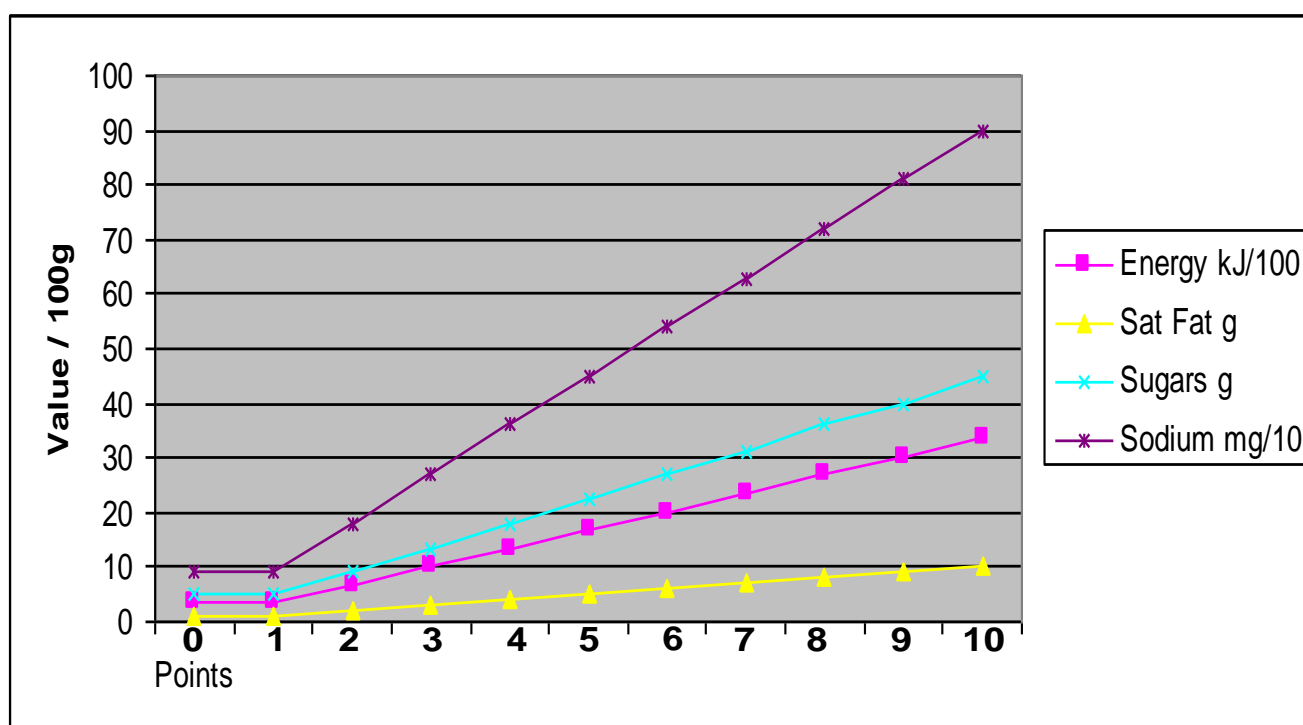
FSANZ has proposed using a Nutrient Profiling Scoring Criteria scheme be used to assess whether food products would be eligible to carry health claims. The scheme is relatively simple. It allocates 'points' to the food products based on the levels of risk-associated nutrients, and the type of food. The accumulated points then provided a 'score' which allowed (or not) the food to carry the claim.

The AFGC considers the NPSC to be seriously flawed. It attempts to create a 'healthiness' score based on nutrient composition. However:

- 1) the points allocated are not proportionate to health impact of the nutrient relative to other nutrients – so it is not an accurate index;
- 2) the model is linear, which is not biologically likely;
- 3) there are no threshold or plateau effects, which is also not biologically likely;
- 4) the model is strictly additive discounting interactions between nutrients assuming health risks associated with nutrients are all independent;
- 5) the 'points' value changes with food matrix. There are three food categories and the model proposes the health risk of nutrients differs in different foods. This is unlikely;
- 6) the model ignores usual consumption patterns and habits including serve sizes;
- 7) through small changes in composition products can suddenly become 'healthy'; and
- 8) it differs from every other nutrient profiling system, underscoring the fact that there is no underpinning in established nutritional science.

**The FSANZ NPSC therefore fails the test of good science, and is unsuitable for classifying foods for purpose.**

Figure. The FSANZ Nutrient Profiling Scoring Criteria – relationship between product energy or nutrient content and the point valued assigned to it. For scaling purposes the Energy value is expressed as (kJ/100g)/100, and the Sodium value is expressed as (mg/100g)/10.



### APPENDIX 6 - AFGC MEMBERSHIP AS AT 30 DECEMBER 2010

Arnott's Biscuits Limited	Kraft Foods Asia Pacific	BRI Australia Pty Ltd
Asia-Pacific Blending Corporation P/L	Laucke Flour Mills	*Baking Association Australia
Barilla Australia Pty Ltd	Lion Nathan National Foods Limited	CAS Systems of Australia
Beak & Johnston Pty Ltd	Madura Tea Estates	CHEP Asia-Pacific
Beechworth Honey Pty Ltd	Manildra Harwood Sugars	CSIRO Food and Nutritional Sciences
Beerenberg Pty Ltd	Mars Australia	CoreProcess (Australia) Pty Ltd
Bickfords Australia	McCain Foods (Aust) Pty Ltd	*CropLife
Birch and Waite Foods Pty Ltd	McCormick Foods Aust. Pty Ltd	CROSSMARK Asia Pacific
BOC Gases Australia Limited	McDonald's Australia	Dairy Australia
Bronte Industries Pty Ltd	Merisant Manufacturing Aust. Pty Ltd	Food Liaison Pty Ltd
Bulla Dairy Foods	Nerada Tea Pty Ltd	FoodLegal
Bundaberg Brewed Drinks Pty Ltd	Nestlé Australia Limited	*Foodservice Suppliers Ass. Aust.
Bundaberg Sugar Limited	Nutricia Australia Pty Ltd	*Food industry Association QLD
Byford Flour Mills T/a Millers Foods	Ocean Spray International Inc	*Food industry Association WA
Campbell's Soup Australia	Only Organic 2003 Pty Ltd	Foodbank Australia Limited
Cantarella Bros Pty Ltd	Parmalat Australia Limited	*Go Grains Health & Nutrition Ltd
Cerebos (Australia) Limited	Patties Foods Pty Ltd	Grant Thornton
Cheetham Salt Ltd	Pfizer Consumer Healthcare	GS1
Christie Tea Pty Ltd	Procter & Gamble Australia Pty Ltd	Harris Smith
Church & Dwight (Australia) Pty Ltd	Queen Fine Foods Pty Ltd	IBM Business Cons Svcs
Clorox Australia Pty Ltd	QSR Holdings	innovations & solutions
Coca-Cola Amatil (Aust) Limited	Reckitt Benckiser (Aust) Pty Ltd	KN3W Ideas Pty Ltd
Coca-Cola South Pacific Pty Ltd	Safcol Canning Pty Ltd	KPMG
Colgate-Palmolive Pty Ltd	Sanitarium Health and Wellbeing	Leadership Solutions
Coopers Brewery Limited	Sara Lee Australia	Legal Finesse
Danisco Australia Pty Ltd	SCA Hygiene Australasia	Linfox Australia Pty Ltd
Devro Pty Ltd	Schweppes Australia	Logan Office of Economic Dev.
DSM Food Specialties Australia Pty Ltd	Sensient Technologies	Meat and Livestock Australia Limited
Earlee Products	Simplot Australia Pty Ltd	Monsanto Australia Limited
Eagle Boys Pizza	Spicemasters of Australia Pty Ltd	New Zealand Trade and Enterprise
FPM Cereal Milling Systems Pty Ltd	Stuart Alexander & Co Pty Ltd	RQA Asia Pacific
Ferrero Australia	Subway	StayinFront Group Australia
Fibrisol Services Australia Pty Ltd	Sugar Australia Pty Ltd	Strikeforce Alliance
Fonterra Brands (Australia) Pty Ltd	SunRice	Swire Cold Storage
Food Spectrum Group	Tasmanian Flour Mills Pty Ltd	Swisslog Australia Pty Ltd
Frucor Beverages (Australia)	Tate & Lyle ANZ	Tetra Pak Marketing Pty Ltd
General Mills Australia Pty Ltd	The Smith's Snackfood Co.	The Food Group Australia
George Weston Foods Limited	The Wrigley Company	The Nielsen Company
GlaxoSmithKline Consumer Healthcare	Tixana Pty Ltd	Touchstone Cons. Australia Pty Ltd
Go Natural	Unilever Australasia	Valesco Consulting FZE
Goodman Fielder Limited	Vital Health Foods (Australia) Pty Ltd	Visy Pak
Gourmet Food Holdings	Ward McKenzie Pty Ltd	Wiley & Co Pty Ltd
H J Heinz Company Australia Limited	Wyeth Australia Pty Ltd	
Harvest FreshCuts Pty Ltd	Yakult Australia Pty Ltd	
Healthy Snacks	Yum Restaurants International	
Hela Schwarz		
Hoyt Food Manufacturing Industries P/L		
Hungry Jack's Australia	<b>Associate &amp; *Affiliate Members</b>	
Jalna Dairy Foods	Accenture	Amcor Packaging Australia
JBS Australia Pty Limited	Australian Pork Limited	Bundaberg Brewed Drinks Pty Ltd
Johnson & Johnson Pacific Pty Ltd	ACI Operations Pty Ltd	Schweppes Australia Pty Ltd
Kellogg (Australia) Pty Ltd	Amcor Fibre Packaging	Coca-Cola Amatil (Aust) Limited
Kerry Ingredients Australia Pty Ltd	*ASMI	Lion Nathan Limited
Kimberly-Clark Australia Pty Ltd	AT Kearney	Owens Illinois
		Visy Pak
		<b>PSF Members</b>
		Amcor Packaging Australia
		Bundaberg Brewed Drinks Pty Ltd
		Schweppes Australia Pty Ltd
		Coca-Cola Amatil (Aust) Limited
		Lion Nathan Limited
		Owens Illinois
		Visy Pak

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