Australian Food and Grocery Council

SUBMISSION

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TO:
DEPARTMENT OF HEATLH AND AGEING
FOOD REGULATION SECRETARIAT

IN RESPONSE TO:
REVIEW OF FOOD LABELLING LAW AND POLICY

PREFACE

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

The membership of AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors. (A list of members is included as Appendix A.) AFGC represents the nation's largest manufacturing sector. By any measure our members are substantial contributors to the economic and social welfare of all Australians. Effectively, the products of AFGC's member companies reach every Australian household.

The industry has annual turnover of $100 billion and represents 28 per cent of total manufacturing turnover. It is comparable in size to the Australian mining sector, and is more than four times that of the automotive sector. The industry employs more than 315 000 people, half of whom are based in rural and regional Australia. The food manufacturing sector sources more than 90 per cent of its ingredients from Australian agriculture.

AFGC's agenda for business growth centres on public and industry policy for a socioeconomic environment conducive to international competitiveness, investment, innovation, employment growth and profitability.

AFGC's mandate in representing member companies is to ensure a cohesive and credible voice for the industry, to advance policies and manage issues relevant to the industry enabling member companies to grow their businesses in a socially responsible manner.

The council advocates business matters, public policy and consumer-related issues on behalf of a dynamic and rapidly changing industry operating in an increasing globalised economy. As global economic and trade developments continue to test the competitiveness of Australian industry, transnational businesses are under increasing pressure to justify Australia as a strategic location for corporate production, irrespective of whether they are Australian or foreign owned. In an increasingly globalised economy, the ability of companies to internationalise their operations is as significant as their ability to trade globally.

Increased trade, rationalisation and consolidation of businesses, increased concentration of ownership among both manufacturers and retailers, intensified competition and increasingly complex and demanding consumers are features of the industry across the globe. Moreover, the growing global middle class of consumers is more sophisticated and discerning, driving innovation and differentiation of products and services.

AFGC is working with governments in taking a proactive approach to public policy to enable businesses to tackle the threats and grasp the dual opportunities of globalisation and changing consumer demands.

CONTENTS

1. Executive summary 4
2. Recommendations 6
3. Introduction 7
4. General Comments 7
4.1. The COAG Reform Agenda 7
4.2. The Review and its outcomes 7
4.3. Food regulations for health protection versus health promotion 8
4.4. Regulatory Policy 9
4.5. Function of food labels – commercial imperatives 12
4.6. Track record of the market meeting consumer needs 12
4.7. International Trade 13
5. Specific Comments 13
5.1. COAG Principles of Good Regulation – application to food labelling 13
5.2. Nature versus production and processing methods 14
5.3. Scope of food labelling policy and regulations 14
5.4. Intersection with other legislation 15
5.5. Use of voluntary codes in the food industry for labelling 16
5.6. Practical constraints to labelling information 17
5.7. Consumer Choice and Right to Know issues 18
6. Future of Labelling 18
6.1. The concept of extended labelling 18
6.2. Regulatory challenges 21
6.3. Food industry's ongoing commitment 21
7. Conclusions 21

1. 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.

2. RECOMMENDATIONS

That the Review

1. consider the broader COAG business regulation reform agenda for Australia's food regulatory system and ensure alignment of the Review findings with COAG's objectives.

2. as a priority in its considerations, work towards identifying key principles which can ultimately provide the basis for a comprehensive, robust, workable food labelling regulatory policy in Australia and New Zealand.

3. endorse the COAG principles of good regulation and reaffirm their application to food labelling policy and regulation.

4. consider the need for labels to attract consumer purchase and the corollary that mandatory labelling requirements should not unnecessarily undermine the commercial viability of the product, or be a *de facto* tool to prohibit the manufacture and marketing of foods.

5. note that there are many examples of the food industry producing and labelling products for exacting consumer markets in the absence of any labelling specific regulations.

6. note the value of ensuring Australian labelling requirements are consistent with those of overseas markets to support the competiveness of Australia's manufacturers overseas.

7. note that the food labelling policy vacuum has led to a conflict in current food labelling regulations which both mandate and prohibit factual nutrition and health information being provided to consumers.

8. consider Australia's food labelling policy and regulation in the context of Australia's obligations under World Trade Organization Agreements and wider government policy commitments to free trade.

9. consider the scope of food labelling policy and regulations and provide guidance on what should, and should not, be covered.

10. recognise that where labelling regulations interface between broad product categories, such as food and drugs, labelling policy and regulations should not provide commercial advantage, or disadvantage, to products based on their classification under different regulatory regimes.

11. recognise that overlapping regulatory arrangements have the potential to, and do, conflict in some cases causing practical difficulties for industry.

12. support the information needs of consumers being met by a range of regulatory measures from full black letter law through to voluntary industry codes.

13. consider the balance between the consumers "right to know" with the practical constraints providing information on food labels, and the other avenues by which consumers can inform themselves about food products.

3. INTRODUCTION

AFGC welcomes the opportunity to make this submission to the *Review of Food Labelling Law and Policy* ("the Review"). The submission is presented in three parts:

- **General Comments** – a discussion about food labelling, policy and regulation in a broad context;
- **Specific Comments** –specific issues which AFGC recommends be considered during the review; and
- **Future of Labelling** – in which AFCG describes the concept of "extended labelling" and the opportunity it provides for information dissemination to consumers, and the concomitant regulatory challenges in the near future.

AFGC provides this preliminary submission to the Review, noting that the Department of Health and Ageing has indicated this is an initial consultation and that there will be further opportunity for more comprehensive submissions, including through public consultations, as the Review progresses.

4. GENERAL COMMENTS

4.1. The COAG Reform Agenda

AFGC notes that this Review is part of the wider Council of Australian Governments business regulation reform agenda and more specifically the reform of food regulation. It is critically important the outcomes of this review are not considered in isolation, but rather in concert with other key regulatory reforms including reform to the Governance arrangements of the Australia New Zealand Food Regulation Ministerial Council and reform to ensure more uniform national approaches to food regulation enforcement. It is also important that the Review's ultimate findings are aligned with the greater reform agenda, which has reducing business costs and productivity as a key objective, recognising the flow-on benefits to consumers.

Recommendation

That the Review consider the broader COAG business regulation reform agenda for Australia's food regulatory system and ensure alignment of the Review findings with COAG's objectives.

4.2. The Review and its outcomes

In 1998 the Review of Food Regulation (Blair Review)[1] recommended:

> "*centralising food regulatory policy within a single …….agency"*

Subsequently in 2002 the Food Regulation Standing Committee (FRSC) reporting to the Australian New Zealand Food Regulation Ministerial Council and Food Standards Australia New Zealand (FSANZ) were formed with the intent that the former would develop food policy, and the latter food standards.

1 Food a growth Industry. The report of the Food Regulation Review. Commonwealth of Australia. Aug 1998.

The expectation has been that FRSC would provide a comprehensive policy suite to guide the development of the Australia New Zealand Food Standards Code (FSC) by FSANZ thereby streamlining food standards setting in Australia.

FRSC has developed a number of policy positions, but has yet to address comprehensively food labelling policy – although positions statements on a number of labelling issues have been developed (e.g. country of origin labelling, nutrition and health claims).

Although food labelling standards take up a substantial section of the FSC, there is no overarching, comprehensive food labelling regulation policy. Given the high profile food labelling has in public policy debate, the absence of labelling policy has led to plethora of suggestions from many quarters regarding the adequacy of current food labelling regulations and the adequacy of food labels in meeting consumer needs.

The FSANZ Act provides some objectives for FSANZ in developing the FSC, but they provide limited guidance on key issues such as:

- the purpose of a food label, and what aspects of it should be regulated;
- the scope of food labelling regulation;
- the range of regulatory options for food labelling and under what circumstances one is more appropriate than another; and
- when regulation is necessary and when the market can provide.

The Review provides a 'once in a generation' opportunity for these and other issues to be considered comprehensively. The Review findings and recommendations may then form the basis for a comprehensive food labelling policy guiding not only FSANZ and State and Territory counterparts, but also the activities of the Australian Consumer and Competition Commission (ACCC) and Therapeutic Goods Administration (TGA), the National Measurement Institute (NMI) and Standards Australia. These institutions all administer legislation which abuts against the FSC food labelling provisions. Ideally this would result in a harmonization of labelling regulatory requirements with concomitant benefits for business, and consumers.

AFGC notes that food labelling policy and black letter law is not an issue the Review can address in isolation due to the trans-Tasman regulatory arrangements. **AFGC considers it critically important that the New Zealand perspective also be taken into consideration.**

Recommendation

That the Review, as a priority in its considerations, work towards identifying key principles which can ultimately provide the basis for a comprehensive, robust, workable food labelling regulatory policy in Australia <u>and New Zealand</u>.

4.3. Food regulations for health protection versus health promotion

The rising incidence of diet-related chronic diseases in Australia and New Zealand is resulting in a greater focus on food product labels and the nature of the information and advice they might carry. Prior to any mandatory regulatory approach however, a necessary policy debate is whether food regulations in general have a role in health promotion as opposed to health protection. Clearly, some information is very important for health protection – such as the presence of major

allergens in food products. It is less clear, however, whether mandatory food labelling providing dietary advice is appropriate. This issue has been raised in the public policy debate about the pros and cons of front-of-pack labelling schemes – some have proposed a mandatory scheme which will compel industry to use an interpretive labelling scheme (traffic light labelling) to motivate consumers to make specific food choices. **It should be noted that in contrast to the allergen issue, there is no immediate risk associated with the nutrient levels of food products which would demand labelling**. Rather continual overconsumption of the product might carry higher risks due to the raised dietary levels of risk associated nutrients – thus the labelling is about health promotion rather than health protection. The question then becomes:

> **What is the justification for mandatory labelling of individual food products to promote healthy overall diets?**

AFGC considers there is a role for food labelling in protecting and promoting good health by encouraging the consumption of specific foods in the context of a balanced diet and healthy lifestyles. **Food labels can provide highly targeted advice matching foods, consumer groups and health issues thereby positively influencing consumer behaviour in lifestyle choices.** In contrast the front-of-pack labelling schemes, and indeed other labelling proposals, which rely solely on the nutrient profiles of foods are necessarily poorly targeted as they fail to consider specific health issues, or consumer groups, or individual consumer needs. In this sense they fail to protect health and fail also to effectively promote health.

Mandatory labelling requirements should not discourage purchase but rather assist consumers make the right purchase to meet their individual needs.

It is critical that any regulatory labelling framework addressing the provision of information on food packs to assist healthy eating choices is well grounded in good science and fact-based, consistent with the COAG principles. From this foundation, the appropriateness of specific labelling proposals can be judged, and **ultimately all labelling proposals must satisfy the test of providing benefit to consumers. Also, it is incumbent upon those proposing regulation to provide the supporting scientific evidence and facts**. This is doubly important if the proposals are for a mandatory approach.

4.4. Regulatory Policy

Food labelling policy must be consistent with overall regulatory policy development principles and guidelines as agreed to by Australian Governments[2]. These guidelines provide a framework for developing and imposing regulations and are required to be justified according to a robust demonstration that the benefits outweigh the costs.

AFGC strongly supports this approach for all regulation, including food labelling regulation. Specifically AFGC advocates a "*best practice regulation*" approach which provides a rigorous framework not only for policy and regulation development, **but identifies also factors critical for maximum compliance with regulation**.

2 Council of Australian Governments: Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies. Commonwealth of Australia 2004.

Best practice regulatory framework

1) **Agreed principles of regulatory policy development:** Agreeing to specific principles, or ground rules, for setting regulatory policy and regulations provides higher levels of certainty benefiting industry by facilitating business planning, and benefiting the community by providing high degrees of confidence that oversight of markets is effective. AFGC considers appropriate principles for the setting of food policy and regulation include:

    a. issues to be addressed and the outcomes to be sought must be clearly identified;

    b. evidence and fact-based approaches, including practicality factors, must underpin any market interventions;

    c. appropriate tools such as science based-risk assessment must be used to determine costs and benefits;

    d. stakeholders, particularly those required to implement and pay for any changes in regulations, must be consulted, and reasonably heeded; and

    e. all potential policy instruments must be considered, with the most cost effective being given priority.

2) **Alignment of regulation and policy:** Regulations must be guided and be aligned to an appropriate regulatory policy framework which:

    a. clearly outlines the objectives of the policy and pursuant regulations;

    b. defines the scope of the regulations with clear statements on what the policy does, and if necessary does not, encompass;

    c. identifies appropriate regulatory tools which including regulations and supporting tools to augment effectiveness (such as education); and

    d. focuses on outcomes allowing for both prescriptive, and non-prescriptive, approaches.

3) **Proportionate regulatory approaches:** Depending on the nature of the issue to be addressed a number of regulatory approaches can be adopted[3] vis:

    a. full regulation/black letter law – when issues of high importance to the community are being addressed and market failures may lead to substantial detriment clear mandatory requirements are needed with appropriate sanctions for demonstrated non-compliance;

    b. prescribed codes – when more flexible and responsive approaches are effective, but the community still has a strong interest in the regulatory objectives being met. The full strength of the law is available to address non-compliance;

    c. endorsed codes of practice – when industry seeks to address specific market issues with support from a regulatory agency; and

3 The ACCC provides extensive information on the range of regulatory measures which industries may consider, and the issues which needed to be addressed when introducing codes of practice and voluntary industry codes. www.accc.gov.au .

d. voluntary industry codes/guides – when agreement is within an industry on an approach to address a market issue. This includes best practice guidelines but compliance is entirely voluntary, although in some cases it may be tied to membership of an industry association.

4) **Active enforcement of compliance:** Low levels of compliance to any regulatory measure challenge its integrity and undermine the credibility of the supporting agency. This is the case for regulatory authorities (in the case of black letter law) and industry associations (in the case of voluntary industry codes). High levels of compliance are secured by:

a. active enforcement through appropriate levels of surveillance and timely response to identified transgression;

b. appropriate sanctions for transgression;

c. periodic monitoring and review of the regulatory measure to ensure its relevance and currency with amendment and/or removal of the regulatory measure if it is no longer needed; and

d. clear benefits being associated with high levels of compliance. This is obvious in the case of black letter law - avoiding legal proceedings and their possible consequences are of clear benefit. In the case of voluntary industry codes companies readily comply if they see value either for themselves or the industry as a whole.

This four-part framework forms the foundation for best practice regulation, and therefore appropriate interventions for corrections of market failures. It follows that the community then benefits through appropriate levels of protection against market failures which threaten significant detriment, through to those more benign market failures, which if corrected will achieve more aspirational goals. It is designed to complement rather than take the place of the COAG principles and guidelines[2].

This approach is also consistent with the recommendations of the National Preventative Health Taskforce[4] which advocates for responsive regulation in

> *"…..areas such as the regulation of food advertising, an approach using responsive regulation is required, beginning with an evaluation of self-regulation, moving to co-regulation and independent regulation and legislation where stronger measures are required."*

Recommendation

That the Review endorse the COAG principles of good regulation and reaffirm their application to food labelling policy and regulation.

4 Australia: The healthiest country by 2020. National Preventative Health Strategy- the roadmap for action. Australian Government. Preventative Health Taskforce. June 2009.

4.5. Function of food labels – commercial imperatives

Food labels first and foremost have to represent accurately to the consumer the nature of the food product which may not be apparent due to packaging. This is critical to spark consumer interest in the product. Marketing to consumers is complex, as consumers, and their responses to marketing, are extremely diverse. Food companies spend substantial resources designing labels which fit well with the cultural and social diversity of consumers. Through combinations of words, imagery and branding labels communicate with consumers and create an impression about quality, nutritional attributes, health positioning, taste, convenience and value for money. Moreover, through label design and brand support, food products can represent values shared by the consumer – such as minimising environmental impacts and supporting cancer research.

Food labelling, therefore, creates an expectation about the product for consumers, and encourages purchase. If the product meets that expectation repeat purchase is secured. Without repeat purchases food products rapidly fail in the market place.

When considering mandatory food labelling requirements the impact on the label and its effectiveness must be considered. If products do not sell, the purpose of mandatory labelling requirement becomes redundant – i.e. there is no issue to be addressed, if the food is not being consumed.

The corollary therefore is that application of labelling regulations must take into account the commercial imperative of food companies to sell food products. Any labelling which substantially diminishes the commercial viability of products should not be imposed. This principle applies to all food products[5].

In other words labelling should not be used as a *de facto* tool to force products off the market, or prevent the entry of products onto the market. Other regulations exist which prohibit sale of unsafe and unhealthy food.

This does not discount the fact that mandatory labelling does impose costs, and for some critical safety issues must be imposed (i.e. allergen labelling). Of course, under this circumstance regulation is justified, and industry readily shoulders the cost burden.

Recommendation

That the Review consider the need for labels to attract consumer purchase and the corollary that mandatory labelling requirements should not <u>unnecessarily</u> undermine the commercial viability of the product, or be a *de facto* tool to prohibit the manufacture and marketing of foods.

4.6. Track record of the market meeting consumer needs

The food industry has a strong track record of meeting market needs through food labelling and promotion – even in the absence of formal black letter law regulation.

5 The Food Standards Code prohibits the sale of unsafe food. Food labelling regulations are not therefore a means of ensuring foods are safe, rather they provide for the safe and appropriate use of foods through requiring allergen labelling, nutrition labelling and directions of use etc.

For example, Australia produces, manufactures and markets Halal and Kosher foods, which have been prepared to the specifications of religions of Islam and Judaism respectively. Organic food is labeled according to the requirements of collective industry codes. These all represent different forms of voluntary industry codes demonstrating the ability of industry to respond to specific, and indeed complex, community needs.

Recommendation

That the Review note that there are many examples of the food industry producing and labelling products for exacting consumer markets in the absence of any labelling specific regulations.

4.7. International Trade

The Australian food manufacturing sector exports approximately $17billion of product each year from a total turnover in the order of $80billion[6]. Ideally labelling of foods for Australia's domestic market would also be suitable for export markets so that companies' costs are minimised and the competiveness of the product is supported.

Recommendation

That the Review note the value of ensuring Australian labelling requirements are consistent with those of overseas markets to support the competiveness of Australia's manufacturers.

5. SPECIFIC COMMENTS

5.1. COAG Principles of Good Regulation – application to food labelling

AFGC has the view that all regulation should be consistent with the COAG principles of good regulation[2]. Food labelling regulatory policy needs to be framed around two key questions:

- 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?

Over a number years there has been a slow increase in food labelling requirements for packaged food – for example percentage ingredient labelling, genetically modified food labelling, country-of-origin, and nutrition information panels.

Against this backdrop and incongruously, Australia's food regulations have maintained a general prohibition preventing food companies from providing truthful, substantiated information describing how the consumption of a food in the context of a balanced diet might protect and promote good health.

AFGC does not intend to address these labelling issues in detail in this submission. **The anomaly of labelling regulations both mandating and prohibiting potentially useful information being provided to consumers highlights the need for a clear food labelling policy based on COAG principles**.

6 Australian Food and Grocery Council. State of the Industry Report. 2009. Essential information: facts and figures. AFGC 2009.

Recommendation

That the Review note that the food labelling policy vacuum has led to a conflict in current food labelling regulations which both mandate and prohibit factual nutrition and health information being provided to consumers.

5.2. Nature versus production and processing methods

Food labelling regulations originally considered foods solely as consumed products targeting specific food safety and health issues. The rationale was simple - the public needs to know the nature of what they are eating. **The food labelling regulations have, however, extended their scope beyond the nature of products to production and processing methods**. For example if gene technology or irradiation is used in food production mandatory labelling requirements may be triggered, even if the food is not materially affected as a food.

Each time mandatory regulation relating to the production and processing methods are introduced there is the potential for clashes with Australia's international trade obligations under the World Trade Organization. The Technical Barriers to Trade Agreement[7], specifically prohibits countries discriminating between products on the basis of production and processing methods.

AFGC supports free trade, and the principles embodied in WTO Agreements, as critical to the competitiveness of the food manufacturing industry in exports markets. The credibility of Australia's argument for removal of trade barriers by other countries, requires an aligned domestic policy, including in food regulatory policy.

Recommendation

That the Review consider Australia's food labelling policy and regulation in the context of Australia's obligations under World Trade Organization Agreements and wider government policy commitments to free trade.

5.3. Scope of food labelling policy and regulations

As discussed above food labelling regulations have clearly extended beyond considering only the nature of the food product and now consider production and processing methods, and other issues such as country of origin labelling.

Most recently, however, the food labels are being seen by some as potential vehicles to promote wider issues, particularly in the area of the environment. For example there have been calls to indicate the use of palm oil[8] in food products and provision of carbon footprint labelling.

AFGC and the food industry, recognises the importance of providing consumers with information to make informed choices, including information relating to how food is produced and where it comes from. **It is important, however, to ensure that the food labelling standards are the most**

7 http://www.wto.org/english/tratop_E/tbt_e/tbt_e.htm

8 FSANA recently rejected an application for mandatory labelling identifying the use of palm oil in a product. FSANZ rejected the application on the basis that the FSANZ Act does not allow it to regulate based on environmental issues.

appropriate means for providing the information, particularly if it is to be mandated. For example, when it comes to the issue of green house gas emissions, it may be that the Government decides that providing consumers with carbon footprint labelling is necessary to enable consumers to be aware of the "carbon" embedded within products. This, however, should be a regulation which applies to all goods and services - not just food products – as all goods and services have carbon costs.

Policy is required which clearly defines the scope of food labelling regulations – that is what issues the regulations do, and do not, cover.

AFGC, in further submissions to the Review, will gives its view on what issues should be covered by mandatory food labelling regulations and what can be covered by voluntary codes.

Recommendation

That the Review consider the scope of food labelling policy and regulations and provide guidance on what should, and should not, be covered.

5.4. Intersection with other legislation

The FSC is not the sole legislative means of regulating food labels in Australia.

Trade Practices Act

The Trade Practices Act (and consumer protection laws of the States and Territories) and supporting guides establish a broad requirement that product labels must not be misleading to a reasonable consumer. They also set a guidance framework around product claims. The ACCC which administers and enforces the TPA has formed views which have not been aligned to the FSC, resulting in confusion for the food industry. In one instance, an amendment to the FSC was triggered causing the industry to loose the use of a "gluten free" claim. **This had the result of not only causing mis-alignment with the international standard on "gluten free" under *Codex Alimentarius*[9] but also of hindering consumers seeking to avoid foods which may not be suitable for them – hardly an outcome consistent with a good labelling policy.**

Therapeutic Goods Administration (TGA).

The TGA legislates the labelling of therapeutic goods including claims which may be made about products through prescribed industry voluntary codes. Some "over the counter" products, and complementary medicines also share a number of "attributes" with foods. Their designation as therapeutic goods relates to claims about the product which might be made. For example, throat lozenges are very similar to confectionery, but are legislated under the TGA rather than the FSC.

In the future it is likely that the current prohibition on health claims on food packs will be relaxed. Due to the similarities in their nature, many products are likely to sit close to the food:thereapeutic good interface. **It is critical that regulation on either side of the regulatory interface are in harmony and provide a level playing field across the interface to ensure products are neither commercially advantaged, nor disadvantaged under different regulatory regimes.**

9 www.**codex**alimentarius.net .

Recommendation

That the Review recognise that where labelling regulations interface between broad product categories, such as food and drugs, labelling policy and regulations should not provide commercial advantage, or disadvantage, to products based on their classification under different regulatory regimes.

Weights and measures

At present the States and Territories have responsibility for Trade Measurement, both in the enactment of legislation and enforcement. However, this is about to change with the NMI assuming responsibility for the national administration of the Commonwealth Trade Measurement Act and the National Trade Measurement Regulations 2009. As Commonwealth legislation this will have dominance over State and Territory legislation, and therefore where there is a conflict in labelling requirements the National Trade Measurement Regulations (NTMR) will take precedence over any labelling requirements specified under the Food Standards Code. The NTMR were gazetted on 11 September 2009 with a number of areas of conflict identified. For example:

Name and address:

The address must be the person who packed the product, or on whose behalf it was packed, and the name and address must be a place in Australia. This would appear to require the name and address of the importer, but it is not explicit and is not as clear as the requirements laid out in the FSC, and conflicts with the Trans Tasman Mutual Recognition Agreement in requiring the importers name to be on the product. In contrast, the FSC requires "*The label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food*."

Prescriptive labelling requirements:

NTMR is highly prescriptive in specifying the requirements for minimum character height, and placement of the information. This is in conflict with the Food Standard Code, which simply requires that the lettering on a label be prominent and legible.

Recommendation

That the Review recognises that overlapping regulatory arrangements have the potential to, and do, conflict in some cases causing practical difficulties for industry.

5.5. Use of voluntary codes in the food industry for labelling

AFGC has argued above about the needs for labelling regulations to be consistent with a proportionate response. This recognises that when the potential for great detriment to occur is high, then full regulatory measures are warranted, but for lesser detriments less regulatory intervention is required.

This concept is well developed in ACCC material[10] which describes a continuum of regulatory measures from black letter law through to voluntary industry codes. Voluntary codes can be as effective as black letter law but have the advantage of being more flexible through being more readily amended to reflect changing industry conditions or community concerns.

AFGC has developed a form of voluntary code for front-of-pack labelling called *the Daily Intake Guide Labelling Scheme*. Launched in November 2006 there are now well over 2000 products which carry the "thumbnail" labels providing the levels of key nutrients in the product, and the proportion this represents in an average daily diet.

A further example is the AFGC *Guide to Allergen Labelling*. This provides companies with a best-practice approach to food product labelling beyond that required by the FSC. In doing so it helps industry determine the most appropriate form of labelling statements resulting in better labelling for consumers.

AFGC considers there are greater opportunities for the food industry to collectively develop voluntary industry codes which can guide the industry on appropriate labelling in the nutrition and health area. In the final analysis the interests of consumers and industry for labelling are entirely coincident – consumers want enough information to make informed choices and industry wants to give it to them. It is through a combination of full regulation and voluntary codes of different types that the interests of consumers can not only be protected, but fully catered to.

Recommendation

That the Review support the information needs of consumers being met by a range of regulatory measures from full black letter law through to voluntary industry codes.

5.6. Practical constraints to labelling information

There are a number of practical constrains upon the information which can be put onto food labels. These include:

Pack size – clearly the bigger the label the easier it is for information to be included, but many products have limited label space. Trying to cram more and more information on to the label can reduce their utility to consumers. The label can become cluttered to the extent that consumers are discouraged from seeking information they need.

Cost of label changes – label changes always cost money ranging from a few thousand dollars to several hundred thousand depending on the nature of the change. This can escalate substantially when the size of the industry is considered[11].

Commercial trade requirements – mandatory labelling requirements necessarily compete for labelling space with other commercial requirements including need to place a barcode on products and the packaging recycle symbol.

10 www.accc.gov.au

11 Cost Schedule for Food Labelling Changes. PriceWaterhouseCoopers. Food Standards Australia New Zealand. March 2008.

The net result is that **label space is at a premium**. Proposing additional labelling requirements – either through black letter law or voluntary codes requires care, prioritisation of information, and ultimately strong justification.

5.7. Consumer Choice and Right to Know issues

AFGC strongly supports the consumers' right to choice and access to information to assist that choice. However it is not incumbent upon the food industry through the labelling of products to meet all the information needs of all consumers all the time [except if public health and safety is at issue]. And the food industry cannot practically do this**. Moreover it is certainly not incumbent upon government to mandate the availability of information on food labels, unless there is a clear, public health and safety issue and strong evidence that labelling can address it more cost effectively than alternative measures**. This is particularly true in this day and age as access to information via the internet has never been easier. The food industry is committed to providing information about its food products. Individual consumers can call company hotlines and request specific information, or they can go to web sites.

Recommendation

That the Review consider the balance between the consumers "right to know" with the practical constraints on providing information on food labelling, and the other avenues by which consumers can inform themselves about food products.

6. FUTURE OF LABELLING

6.1. The concept of extended labelling

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

Figure1. Bar code with unique product identifier number.

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

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

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

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

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

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

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

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

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

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

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

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

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

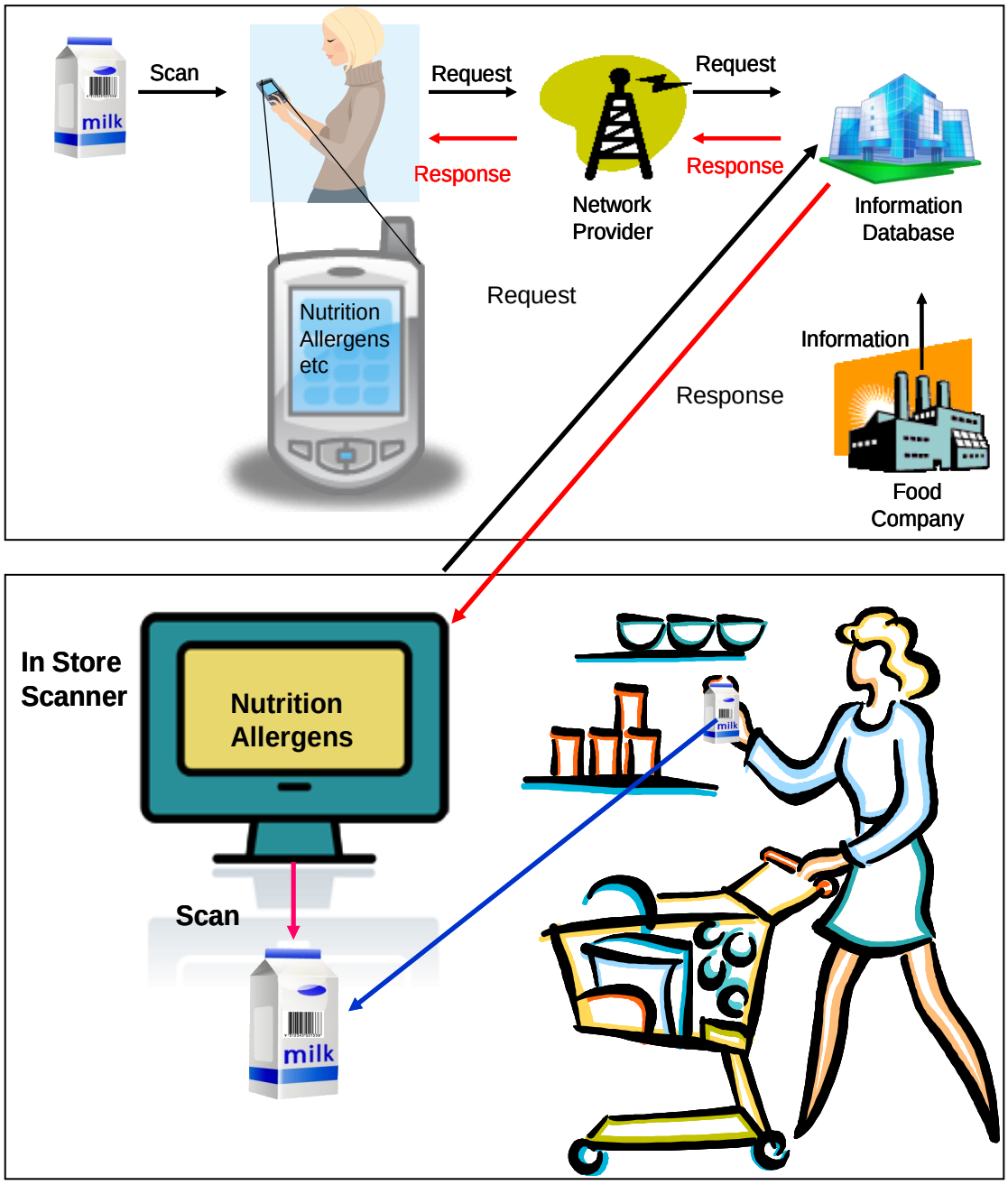

Figure 2. Extended Labelling – how it will work via mobile telephone technology, and in-store scanners.

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

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

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

6.2. Regulatory challenges

The concept of "extended labelling" is one example of how technology can provide for the information needs of consumers into the future. And indeed, this technology has the potential to render many of the current labelling issues redundant. Label size and the ability to provide information will not be an issue. The challenge will be providing consumers with wherewithal to filter the information which they particularly need, and want.

There will off course still be some information which will have to present of food packages, particularly for health and safety reasons but when it comes to other consumer issues – the extended labelling technology, or web based systems can provide the critical information.

The challenge, however, will be for regulators to consider what and how to regulate.

6.3. Food industry's ongoing commitment

The food industry will be continue to meet the information needs of consumers to the best of its ability, and it will seek new ways of meeting those needs. And it will continue to support the mandatory labelling requirements when justified by strong evidence of the public health and safety benefit, or benefit to consumers understanding of the nature of the food product.

Above and beyond that the food industry, as individual companies and also collectively, will continue to seek ways to more effectively meet consumers needs, and wants, for information to support brands.

7. CONCLUSIONS

The complexity of the food labelling issue reflects the complexity of the society in which we live. Each and every consumer has a view of food, and many have a view of food labelling and the link to food choices. Ultimately, however, food regulation can only address a limited range of issues effectively, and they must be prioritised. Currently food safety heads the list based on objective science based evidence.

Other priorities are established more subjectively, but evidence must still be presented justifying regulations which lead to benefits which outweigh costs.

Food labelling policy should reflect however, that the market can and does provide for the further information needs of consumers. The challenge therefore is to establish the appropriate balance between a regulatory measures and market measures, and for food regulatory policy to reflect that.

AFGC looks forward to providing further input into the Review. In its next submission AFGC will build upon the arguments presented here in support of its recommendations. In doing so AFGC is seeking a new paradigm in the regulatory approach to food labelling, and the opportunities for consumers and industry alike, which that presents.

AFGC MEMBERS AS AT OCTOBER 2009

Arnott's Biscuits Limited
- Snack Foods Limited
- The Kettle Chip Company Pty Ltd

Asia-Pacific Blending Corporation Pty Ltd
Barilla Australia Pty Ltd
Beak & Johnston Pty Ltd
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Owens Illinois
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Australian Food and Grocery Council
Level 2, Salvation Army House
2–4 Brisbane Avenue
Barton ACT 2600

Locked Bag 1
Kingston ACT 2604

T: (02) 6273 1466
F: (02) 6273 1477
afgc@afgc.org.au
www.afgc.org.au

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