



Submission to the

**Victorian Competition and Efficiency
Commission**

**Food Regulation in Victoria Inquiry
Issues Paper**

December 2006

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 Fax 02 9577 3377 Email ausconsumer@choice.com.au

www.choice.com.au

The Australian Consumers' Association is a not-for-profit company limited by guarantee.

ABN 35 799 246 568 ACN 000 281 925

About CHOICE

CHOICE (previously known as the Australian Consumers' Association) is an independent, not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods and services, health and personal finances, and to help maintain and enhance quality of life for consumers. CHOICE provides consumer education, conducts surveys into consumer attitudes, lobbies for improved conditions for consumers and distributes unbiased consumer advice.

Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests. CHOICE is primarily funded through subscriptions to its magazines and website, fee-for-service testing and other related expert services. There is no government funding for normal running expenses of CHOICE, and no commercial sponsorship or advertising.

Food regulation has long been one of CHOICE's key policy priorities. For many years we have worked with regulators, enforcement agencies, governments, industry and other non-government organisations to ensure that food regulation protects the interests of consumers. CHOICE believes that food regulation should ensure that the food supply is safe to eat, that it protects and promotes the health of Australia consumers, that consumers are able to make informed choices about the food they buy and that food is not sold or marketed in a misleading or deceptive manner.

CHOICE is aware that regulation is increasingly being subject to scrutiny in order to minimise any negative impact on business. CHOICE has a general position on the role of regulation in protecting consumers. This position underpins many of the points raised in this current submission. For further information, please see the box "*The role of red tape*" below and our submission to the Australian Government's Review of Regulatory Burden on Business.

Objectives of Food Regulation

In a joint submission to the Food Regulation Review (June 1998), CHOICE and the Public Interest Advocacy Centre argued that any new system of food regulation in Australia must:

- ⇒ protect public health as its prime objective;
- ⇒ include the provision of adequate and appropriate consumer information as an equally important objective;
- ⇒ continue to fall under the health portfolio;
- ⇒ separate consumer and producer interests; and
- ⇒ support a national public health nutrition policy.

Following the 1998 review the primary objectives of food regulation in Australia were established. They are:

1. The protection of public health and safety.
2. The provision of adequate information relating to food to enable consumers to make informed choices.
3. The prevention of misleading and deceptive conduct.

CHOICE supports these as the key objectives for food regulation in Australia. While regulator's primary focus is correctly placed on protecting the health and safety of

consumers, at times, regulators may forget that food regulation is about more than just food safety.

Issues that aren't related to food safety (such as food labelling) are often low on the list of priorities of enforcement agencies and may not be actively enforced at all. There can also be inconsistencies in the way regulation is enforced. For example, one State might be interested in policing country of origin labelling while another may see health claims as an enforcement priority.

CHOICE is also concerned that despite the fact that the primary objectives of food regulation relate to public health and safety and consumer protection, the interests of the food industry can be given undue weight in the decision making processes. For example, CHOICE believes that a recent decision to permit the addition of vitamins and minerals to sweetened formulated beverages favours the interests of food manufacturers in developing and promoting fortified product. The decision to permit the addition vitamins and minerals to sugary drinks is inconsistent with public health messages to limit the consumption of sugar and sweetened beverages.

FSANZ Processes

CHOICE feels that the most positive attribute of the FSANZ process is its openness and transparency. There is a statutory requirement for FSANZ to conduct at least one round of public consultation, usually through submissions to FSANZ on its Initial or Draft Assessment Reports.

In the past CHOICE has been critical of the degree to which consumer views were incorporated into FSANZ recommendations given that few consumers have the desire or the capacity to provide written submissions. A number of recent initiatives indicate FSANZ's willingness to improve consumer input into its decision making.

A Consumer Liaison Committee was established consisting of 12 'grass roots' consumers and consumer representatives. The committee meets a number of times a year to discuss issues on the FSANZ workplan as well as other food regulatory issues that are affecting consumers. Further FSANZ established a new social research position which has increased the capacity to conduct consumer research.

FSANZ has also established a new public health nutritionist position which has enhanced FSANZ's consideration of the public health and nutrition impact of proposed regulations.

The FSANZ assessment and approval proposals have recently been reviewed and a number of recommendations are due to be introduced. A number of these changes attempt to streamline processes that were unnecessarily lengthy. We see merit in introducing new processes to expedite making minor changes to the Food Standards Code (for example fixing typographical errors). However, other changes will unnecessarily limit the level of public consultation in an attempt to promote innovation and development in the food industry.

The proposed changes to the health claims process remove public consultation altogether. In CHOICE's opinion this threatens the integrity of the FSANZ processes and undermines its primary objectives. CHOICE believes that changes such as this

place the interests of the food industry above the interests of the consumers that FSANZ is charged to protect.

Consistency between State and Territory and Commonwealth Regulation

CHOICE acknowledges that there may be some inconsistencies between Commonwealth and State and Territory regulations that place undue burden on members of the food industry. Producers and manufacturers that conduct business in a number of States and Territories may also be required to meet different State and Territory regulations.

CHOICE also acknowledges that the divide between State and Territory and Commonwealth governments may result in duplication of regulation or inconsistencies between requirements of the State government and Commonwealth regulations. CHOICE agrees with the principles of minimising duplication and addressing inconsistencies provided that food safety, public health and consumer protection requirements are still met. Failure to adequately protect consumers may be more costly in the long term than duplications in regulation.

As a result of the Food Regulation Review that took place in the late 1990's, FSANZ has commenced developing a number of primary production and processing standards. This will ensure that the Food Standards Code covers the entire food supply from "farm to fork". Until these standards were developed these industries were governed primarily by State based regulation. The seafood and poultry primary production and poultry standards were the first to be developed. CHOICE understands that there is some uncertainty among industry groups and enforcement agencies about the implementation and enforcement of the standards.

More generally, the division of responsibility for standard development at the Commonwealth level and enforcement and monitoring at the State and Territory levels can also create inconsistencies. When developing or amending a standard FSANZ must give consideration to how the standard would be enforced. The reality is that enforcement agencies may not have the resources to devote to enforcing all aspects of the Food Standards Code.

Food labelling

CHOICE believes that disclosure of product information on food labelling shouldn't be seen as a substitute for regulating industry practices. It is often argued that there is too much information on food labels and on occasion the food industry have resisted changes to labelling requirements, arguing that it is expensive and that these costs will be passed on to consumers. On the other hand manufacturers have no problem in changing labels to advertise the latest promotion or competition or to add new marketing claims to a label.

CHOICE supports all the mandatory information requirements on food labels. Information such as date marking, storage suggestions, allergen labelling, ingredient lists and nutrition information panels protect the health and safety of consumers and allow them to make informed choices about the content of the foods they eat and the impact it may have on their health. With consumers increasingly interested in how and where their food is produced labelling GM

status, country of origin information and terms such as 'organic' and free range' also require regulation to ensure that consumers know what they are getting and get what they pay for.

Another outcome of the food regulation review was the removal of prescriptive food standards for a range of food products. Where previously the content of many food products were prescribed, most of these standards were removed. The intention was to allow manufacturers greater flexibility in the content and recipe of food products. The consumer protection measure that was implemented in place of these prescriptive standards was to indicate the percentage of characterising ingredients in the ingredients list. It was argued this would allow consumers to make informed choices about the foods they purchase by comparing the content of similar products.

For example, where the Food Standards Code once required canned fish products to have a minimum of 51% fish, the new standard allows any amount of fish to be added but requires the percentage of fish to be stated in the ingredients list. When CHOICE reviewed a number of products in August 2003 it found a number of canned fish products with fish content as low as 46%.

This change shifted the onus of responsibility from manufacturers to consumers. Where previously it was the manufacturers responsibility to produce food to certain minimum standards, the onus is now on consumers to look at ingredients lists when choosing between products. CHOICE did not feel that this was an adequate trade-off and is cautious of food labelling being used as a substitute for regulation.

Closing remarks

Victoria is the first jurisdiction to conduct a review of food regulation since the Food Regulation Review in the late 1990's. It is likely similar reviews will take place in other jurisdictions following the Australian Government Review of Regulatory Burden on Businesses. CHOICE understands that the Commonwealth and South Australian Governments will announce their own reviews of food regulation shortly.

Reviewing food regulation is no simple task given the complexity of the food regulatory system and the plethora of regulations that apply to food businesses. Concurrent reviews of food regulation are likely to cover the same ground and seek input from the same stakeholders. Stakeholders may have many comments to make about various aspects of the current regulatory process. CHOICE urges VCEC to communicate with other jurisdictions to develop a co-ordinated approach to reviewing Commonwealth, state, territory and Local government regulation that avoids placing undue burden on stakeholders who participate in these processes.

Again, CHOICE appreciates the opportunity to provide these comments and hopes that the issues raised in this submission and the supporting documents will be given due consideration in this review of food regulation. CHOICE looks forward to providing further comments on the draft report.

The role of red tape

CHOICE does not believe in regulation for the regulation's sake. Government regulation will not always be the best and most effective way of protecting consumers, nor is it always necessary. Poor or ineffective regulation might be just as bad for consumers as having no regulation at all.

Some regulation is introduced as a knee-jerk reaction or irrational response to community fears or concerns. If the feared harm is unlikely to occur or the potential consequences are not significant then the greater good might be better served by letting the risks lie where they fall.

On the other hand, much regulation is essential to the practical operation of markets and to creating and preserving the trust of consumer and businesses in them. Further, good quality regulation is often the most efficient way to protect consumers from unfair practices when those markets don't work as well as they should or fail to adequately protect consumers.

CHOICE rejects an approach which views regulation solely as 'red tape' that unnecessarily stifles innovation and limits the legitimate activity of business. Naturally, views will differ depending on whether one's interest is in promoting industry innovation or protecting consumers from inappropriate products and practices. In our view there should be as little regulation as possible but as much as is necessary to protect consumers. The VCEC inquiry into food regulation in Victoria must balance the need to protect consumers from unsafe foods and unscrupulous practices in the food industry, with the desire to reduce cost on industry and to promote innovation and development within the food industry.