

AUSTRALIAN CONSUMERS' ASSOCIATION

RESPONSE TO THE

REVIEW OF

THE AUSTRALIA AND NEW ZEALAND

FOOD REGULATION

MINISTERIAL COUNCIL

CONSULTATIVE MECHANISM

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ACA

Australian Consumers' Association
INDEPENDENT INFORMATION FOR SMART CONSUMERS

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About ACA

ACA is pleased to make this submission to the Review of the Australian and New Zealand Food Regulation Ministerial Council Consultative Mechanism. ACA is an independent not-for-profit, non-party-political organization established in 1959 to provide consumers with information and advice on goods and services, health and personal finances, and to help maintain and enhance the quality of life for consumers. ACA 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. ACA is primarily funded through subscriptions to its magazines, fee-for-service testing and other related expert services. There is no government funding for normal running expenses of ACA, and no commercial sponsorship or advertising.

ACA's Involvement in Stakeholder Consultation on Food Policy Development

ACA has been involved in food regulation stakeholder consultation on a range of policy matters including nutrient, health and related claims, fortification of foods with vitamins and minerals, food-type dietary supplements, novel foods and country of origin labelling. Over time we have seen an improvement in the quality of the discussion documents prepared for distribution. Other stakeholders at the Food Policy Development Consultation Forum (Consultation Forum) held in March 2004 also acknowledged this improvement.

The level of involvement that ACA has had in each issue has varied due to the different stakeholder consultation processes employed in each case. Section 2 of the Operating Protocol allows for the Ministerial Council to determine whether additional consultation is carried out, and if so, the methods that will be used. However, it is not clear to stakeholders how and why Ministers have decided on particular methods of stakeholder consultation and this has resulted in what appears to be a lack of consistency in stakeholder consultation.

As a member of the nutrition, health and related claims policy advisory group (PAG), ACA was directly involved in the development of the claims classification framework and policy advice that went to Ministers. ACA was also invited to participate in an External Stakeholder Group that provided input into the development of the discussion paper on fortification of food with vitamins and minerals, however the ESG did not have sign-off on the final document as was the case with the PAG. In the food-type dietary supplements policy development, ACA provided input through the submission process only. In ACA's opinion these three policies are all extremely significant and inextricably linked. It is difficult to understand how Ministers determined such varying levels of stakeholder involvement. ACA believes greater clarity is needed on the chosen mechanisms for stakeholder consultation, as the current approach appears fragmented and inconsistent.

It should also be noted that ACA withdrew from PAG and withdrew its support for the claims classification framework that the PAG had endorsed. This was primarily due to the attempts by food industry representatives to have a particular area of the document changed after the PAG had officially voted and signed off on the recommendations to go to Ministers. It is interesting to note that the area of

contention related to biomarker claims. ACA understands that industry groups are continuing lobbying efforts to reverse the most recent Ministerial Council decision to treat all biomarker claims as high-level health claims.

Consumer Consultation

ACA acknowledges that effectively engaging consumers in policy development and stakeholder consultation is no simple task. We therefore believe that there should not be a 'one size fits all' approach to stakeholder consultation, and that mechanisms used for engaging industry and government are not necessarily effective in gaining consumer input. ACA acknowledges that this may be the benefit of the flexible and adaptable stakeholder consultative mechanism favoured by Ministers.

However, ACA was disappointed to see that the final Food Regulatory Model did not include a Consultative Council. The proposed Consultative Council that appeared in earlier drafts was replaced by a Consultative Mechanism. The principle of a flexible stakeholder consultation mechanism has its merits. However, ACA is not confident that the flexible consultative process has served consumers well to date. In ACA's opinion the Consultative Mechanism and Consultative Council are not mutually exclusive concepts. Instead, a Consultative Council could guide ministers in their decision on appropriate consultative methods for various policy development processes.

Section 2 of the Operating Protocol lists a range of options for consulting with stakeholders including workshops, public forums, interactive web-based consultation and surveys. While ACA acknowledges that the use of additional stakeholder consultative mechanisms is at the discretion of the Ministerial Council, it is not clear the circumstances under which these processes could be employed. For example, the nutrient, health and related claims policy was, and continues to be, particularly contentious. The issue of biomarker claims is the particular point of disagreement between industry groups and public health, nutrition and consumer stakeholders. ACA feels that this would have been an ideal opportunity for Ministers to employ additional consumer consultative methods such as consumer surveys; to determine whether consumers interpret biomarker maintenance claims any differently to biomarker enhancement claims. Had such research been carried out Ministers may not be facing continuing lobbying efforts to reverse their decision to treat all biomarker claims as high-level health claims.

Transparency and Feedback

Another area that ACA believes requires improvement is the transparency with which decisions are made, the level of feedback stakeholders receive about how their input has been considered, and the how the Ministerial Council used this feedback when reaching their final decision. In ACA's opinion there is currently insufficient information given about why Ministers reached a particular decisions, why some comments are accepted or rejected, and why issues are or are not taken into consideration.

Currently, the main feedback mechanism through which stakeholders can receive information about Ministerial Council decisions is the communiqué that is issued shortly after each Ministerial Council meeting. While these communiqués provide a summary of the decisions made, they do not provide interested stakeholders who

have participated in the policy development process with sufficient information as to the reason behind these decisions.

It is also unclear to many stakeholders how individuals and organisations are selected to participate in specific working groups. For example, the Public Health Association of Australia was not invited to participate in the nutrient, health and related claims PAG despite being an organisation with a considerable understanding of the use of health claims on foods and the impact on consumers and public health. The Australian Medical Association and the Australian Self-Medication Industry also have an interest in health claims policy and its implications on the regulation of therapeutic goods and complementary medicines. These groups would also have made valuable PAG members had they been invited to participate. Therefore, ACA supports the statement in the report from the Consultative Forum for more information on how and when the decision to employ outside expertise is made and on what basis.

Funding for Consumer Participation

As ACA is the primary consumer organisation in Australia with a focus on food issues there is considerable demand for ACA to participate in food-related committees and working groups. Our ability to participate in such committees is in part limited by resources to fund travel and accommodation expenses that may be incurred. However, as explained above ACA is a not-for-profit, organisation. The majority of ACA's funding comes from subscriptions to our products and we must therefore be accountable for how we spend this money. However, in order to adequately represent consumers we rely on the financial assistance to allow us to participate in government and regulatory committee meetings when they are held outside of Sydney.

In ACA's view this is a problem that will be faced by any individual or organisation invited to act as a consumer representative on any working group. Consumer representation and consumer consultation is vital to the food regulatory process and in some cases ACA is the only appropriate representative. While ACA certainly sees that it has a role to providing consumer representation where possible, this can come at a considerable cost to our organisation in both time and money, and at the expense of ACA's other work. This is also true of other individuals who may act as consumer representatives. In many cases these people take on these roles in addition to their normal workload and without financial support. The cost to these individuals not only relates to travel expenses to attend meetings but also in time spent attending and preparing for these meetings.

The lack of funding for consumer representatives will severely restrict the quality of consumer consultation. It is unacceptable that an individual consumer representative should be required to fund his or her own participation on this committee. In effect, consumers are being asked to pay to have their interests represented. While the Food Regulation Secretariat has on occasion agreed to cover travel expenses, ACA is seeking a formal commitment to ongoing funding for consumer representation not just for our own organisation but also for any other organisations or individuals that participate in consumer consultative processes in the future. ACA is aware that other government agencies fund the attendance of consumer representatives; and many also ensure that the consumer representatives are paid a sitting fee or the organisation they work for is recompensed for their time.

Summary

In ACA's opinion much could be done to improve stakeholder consultation by the Ministerial Council and the Food Regulation Secretariat, particularly in the area of consumer consultation. As a result of recommendations made in the 2003 FSANZ Strategic Review, FSANZ is also working to improve consumer and stakeholder consultation processes. ACA suggests that the Food Secretariat and FSANZ work together to improve consumer participation, though we stress that consumer participation in FSANZ processes does not negate the need for consumer participation in policy development.

It was suggested by a State Government official that if stakeholders did not have a chance to consult during the policy development process then they still had an opportunity to participate in the two rounds of public consultation, which are part of the FSANZ standard development process. ACA finds this view somewhat ignorant as stakeholder involvement in the policy making process is vital. The decision of the Ministerial Council sets the framework within which FSANZ develops food standards. Inadequate consideration of stakeholder views during the development of food policy may limit the capacity for stakeholders to influence the resulting food standard.

ACA believes that consumer consultation and stakeholder consultation in general could be improved by:

- a) setting up a Consultative Council to guide stakeholder consultation
- b) engaging consumers through means of surveys and public forums etc.
- c) making a commitment to financially support consumer representatives
- d) improving feedback on Ministerial decisions and outcomes of Ministerial Council meetings
- e) providing more transparent information about chosen methods of consultation and how individuals and organisations are selected to participate

ACA appreciates the opportunity to provide this submission and trusts that these comments will assist the review of stakeholder consultation. ACA looks forward to participating in the next stage of the review and would be more than happy to discuss further any issue raised in this submission.