



Submission to the

**Australian Senate
Community Affairs Committee**

on the

**Food Standards
Australia New Zealand
Amendment Bill 2007**

April 2007

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 (formerly 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.

Background

CHOICE appreciates the opportunity to provide comments on the Food Standards Australia New Zealand (FSANZ) Amendment Bill 2007. Since the review of the FSANZ assessment and approval processes commenced in 2005, CHOICE has participated in numerous consultation activities relating to this review and the resulting amendments.

As part of the consultation process, CHOICE participated in two general stakeholder consultation meetings/workshops, two public health and consumer group consultation meetings, a preliminary meeting with the consultant conducting the review and also provided two written submissions. CHOICE used these opportunities to reiterate its concern that some changes will unnecessarily limit opportunities for participation of consumers and public health experts in an attempt to promote innovation and development in the food industry. Public health groups expressed similar concerns.

CHOICE's comments on a range of proposed changes are outlined in our previous submissions. In this document CHOICE outlines its primary concerns about the proposed health claims process, the removal of the opportunity for a second review and the extent to which food industry interests are being prioritised above public health and consumer interests.

Objectives of food regulation

The primary objectives of food regulation in Australia are set out in Food Standards Australia New Zealand Act 1991. They are:

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

CHOICE supports these key objectives as it makes public health and consumer protection the ultimate goals of food regulation in Australia. Despite this, CHOICE is concerned that a number of food regulatory decisions and reviews have

prioritised the interests of the food industry in relation to competition, product innovation and marketing, above the interests of consumers and public health.

Food regulatory processes

For many years CHOICE has participated in the development of food policy and regulation; acting as a consumer representative on committees and working groups, participating in public forums and stakeholder workshops, providing written submissions, conducting consumer research, and presenting our position directly to Ministers.

Through a long involvement in food regulatory processes, CHOICE has gained an understanding of how this system operates and how to become involved in that process. 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 two rounds of public consultation, usually through submissions to FSANZ on its Initial and Draft Assessment Reports.

CHOICE understands that one aim of the review of the FSANZ processes was to identify ways in which the food regulatory framework could be streamlined and enhance industry innovation. We acknowledge that streamlining the food regulation system could also have benefits for consumers. A number of the recommended changes attempt to streamline processes that are unnecessarily onerous. For example, we see merit in introducing new processes to expedite minor changes to the Food Standards Code (for example, fixing typographical errors). But we are concerned that efforts to improve the food regulatory system in this way may compromise public health and consumer protection objectives.

There is insufficient detail in relation to the types of applications and proposals that would be subject to only one round of public consultation. A previous consultation paper cited the addition of vitamins and minerals to food as an example of an application that would require only one round of public consultation because it would merely be a change to an existing table. Such a suggestion failed to acknowledge the level of debate among industry, public health and medical professionals about the fortification of food with vitamins and minerals. Such changes should be subject to full public consultation because they have potentially significant public health implications and because marketing of these products may result in misleading and deceptive conduct.

On page 31 of the Explanatory Memorandum, Section 42 sets out the conditions under which the full assessment and consultation process would be required. According to Section 42, applications that involve scientific and technical complexity will be subject to the full process. It is not clear what issues are considered sufficiently 'complex' but CHOICE would expect that the addition of vitamins and minerals would require full consultation to assess issues such as dietary modelling, bioavailability of fortified nutrients, and any potential adverse impacts of increased consumption of these nutrients.

Proposed requirements for health claims applications

One of the major strengths of the current FSANZ process is its openness and transparency and the consistency of consultation processes for all applications and

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

CHOICE does not support the proposed changes to the FSANZ assessment and approval processes for health claims. On numerous occasions throughout the consultation process, we have argued that this proposal is not in the best interest of consumers and public health, instead placing industry interests ahead of the three primary objectives of FSANZ. It appears that the views expressed by public health and consumer groups have largely been ignored. Sacrificing openness and transparency and the inhibiting the capacity of public health and consumer organisations to engage in consultation undermines these primary objectives of FSANZ.

CHOICE appreciates that data protection may be of concern to the food industry, because disclosure may prevent any market advantage that may be gained from product innovation. However, the current processes are designed to protect public health and safety and consumer interests, and to do this there must be openness and transparency. CHOICE is also concerned that if information is kept confidential then it will not be subject to peer-review - an important part of the process for establishing the strength of any scientific evidence.

The establishment of an expert panel to advise FSANZ on applications to amend the health claims standard does not go far enough to address CHOICE's concerns. In order to provide adequate protection of consumer and public health interests, applications to amend the health claims standard must be subject to public consultation to enable all public health and consumer stakeholders to comment on the implications of and strength of evidence supporting the proposed changes. This also places unreasonable onus on State and Territory health departments and food authorities to ensure that public health and consumer issues are adequately addressed. Many departments already struggle to address all the food regulatory issues that they are asked to comment on.

In numerous consultation papers on the review of the FSANZ assessment and approval processes, and at least one stakeholder consultation meeting, the elimination of public consultation on future health claims applications was justified on the grounds that health claims are not about public health and safety per se but are about marketing of foods. CHOICE rejects this assertion for two reasons.

Firstly, CHOICE believes that there may be considerable negative public health implications if unhealthy foods are able to make claims about the presence of positive nutrients and the potential health benefit of consuming a particular food. The draft health claims standard released for consultation in November 2005 would allow Kellogg's Coco Pops - a product that is 33% sugar - to make a claim about being a good source of calcium for bone development. A serve of milk could not claim the same benefit. This notion is inconsistent with public health messages about choosing mainly wholegrain cereal products and consuming moderate amounts of sugar. It was only as a result of full public consultation that FSANZ has since revised this.

Secondly, CHOICE rejects the suggestion that only those applications relating to public health and safety should require public consultation. As CHOICE has previously outlined, FSANZ has three objectives, not only to protect public health and safety but to provide adequate consumer information and prevent misleading

and deceptive conduct. The suggestion that only that applications with public health and safety implications (or more accurately, food safety implications) should be subject to the full FSANZ assessment process sets an alarming precedent for the future of food regulation in Australia.

The Impact Analyses provided in the Explanatory Memorandum fails to adequately assess the public health impacts of changes to FSANZ process, particularly in relation to the assessment of health claims applications.

The Impact Analysis suggests that the proposed changes to the health claims process will have no impact on health and safety. It also suggests that a greater range of products carrying health claims could be have public health benefits. CHOICE believes that an increase in processed foods carrying health claims could actually have adverse public health impacts as consumers will be encouraged to eat more highly-processed foods.

Ministerial Reviews

On a number of occasions food industry representatives have expressed frustration over the statutory obligation for Ministers to have two opportunities to request a review of any FSANZ application or proposal. The food industry claims that these reviews unnecessarily prolong the standard development process, and prevent the commercial benefits of getting new innovative products onto the market quickly. Recent applications relating to the addition of phytosterols and calcium to foods were cited as examples of this.

We are not aware of any case where consumers have been disadvantaged when application processes are prolonged as a result of Ministerial requests for review. Reviews of phytosterol and calcium fortification have been requested to further investigate the public health impact of these applications in which case the capacity of Ministers to request reviews is in fact protecting consumers' interests.

CHOICE is concerned that FSANZ fails to give adequate consideration to the long term public health consequences of some applications and proposals. We feel that in requesting these reviews Ministers are in fact looking after the interests of their constituents when they feel consumer and public health interests have not been adequately addressed. Limiting the capacity of Ministers to request a review would limit their ability to protect the interests of consumers.

CHOICE does not support the proposal to amend the FSANZ Act to allow Ministers only one opportunity to request a review. CHOICE suggests that it would be more appropriate to amend the conditions under which Ministers can request a review and the need for FSANZ to consult directly with jurisdictions; and retain the opportunity for a second review should the majority of Ministers feel it is warranted.

The following section is taken directly from CHOICE's submission to the Bethwaite Review of food regulation.

Prioritising public health

Despite the fact that the “protection of public health and safety” is the primary objective of food regulation there is no definition of “public health” or “public health and safety”. This results in varying interpretations of this objective. In some cases it is interpreted as pertaining only to food safety and food-borne illness. Such a limited view of public health and safety only addresses the short-term health impact of food regulation rather than the long-term impact on the health and nutrition of individuals and populations.

Overweight and obesity

More than half of all Australian adults are overweight or obese. The total cost of obesity in Australia in 2005 was \$3.767 billion¹. This includes direct health care costs as well as the indirect costs of lost productivity resulting from obesity related illness.

There are many causes of overweight and obesity but for most people it is preventable through healthy eating and regular exercise. CHOICE believes that there needs to be greater consistency between the Commonwealth government's obesity prevention strategy and the decision-making processes of FSANZ, the Food Regulation Standing Committee (FRSC) and the Ministerial Council.

As overweight and obesity is one of the biggest public health problems facing Australia today, obesity prevention should underpin all food regulatory decisions. Such an approach would be consistent with the primary objective of protecting public health and safety.

A number of recent decisions suggest that FSANZ does not give adequate consideration to obesity prevention and the long-term public health and nutrition implications of food regulation.

Health claims

The FSANZ Draft Assessment Report on nutrition, health and related claims established a set of disqualifying criteria that would prevent foods that are too high in kilojoules, saturated fat and sodium from making claims about potential health benefits of other nutrients.

CHOICE supports this in principle but in practice the criteria prohibited a number of nutritious foods from making claims while some energy dense foods would be permitted to carry claims. For example, because of its small (30g) serving size Kellogg's Coco Pops (a kids' breakfast cereal which is high in sugar and low in fibre) would be permitted to carry claims about being a source of calcium for strong bones because it is fortified with a range of vitamins and minerals. Full cream milk

¹ Access Economics (2006), The economic costs of obesity. Access Economics Pty Ltd.

would be prohibited from carrying a similar claim because a 250ml serve of milk was considered too high in fat.

This conflicts with healthy eating messages which encourage consumers to limit sugary foods and consume dairy products as part of a healthy diet. Few nutritionists would recommend a sugary breakfast cereal as an appropriate source of calcium over a glass of milk.

CHOICE understands that FSANZ have reconsidered this proposal and will soon present a model that takes better account of the overall nutritional quality of foods and drinks.

Formulated beverages

A second example relates to a decision by FSANZ to allow the production of formulated beverages in Australia. These water-based beverages can also contain fruit juice, sugar and/or artificial sweeteners. The distinguishing factor between formulated beverages and other beverages is that they can be fortified with a range of vitamins and minerals.

FSANZ limited the sugar content of formulated beverages but that limit was set so high that one 600ml serve of a formulated beverage could provide an adult with 50% of their recommended daily intake of sugar. Given that sugar is likely to be consumed in many other foods throughout the day (e.g. fruit, breakfast cereals, milk and sugar added to tea and coffee) it is likely that a person who consumes one of these beverages would exceed their recommended sugar intake.

Presenting sugary drinks as a source of vitamins and minerals undermines public health efforts encouraging consumers to reduce intake of sweetened beverages and other energy dense foods. Decisions such as this only serve to add to Australia's escalating levels of overweight and obesity as they enable energy dense foods to be marketed as healthy foods because of added vitamins and minerals.

In addition to this, at the time FSANZ proposed to permit these beverages it was also considering two proposals on the mandatory fortification of folate and iodine in order to prevent neural tube defects and iodine deficiency disorder respectively. Given that mandatory folate and iodine fortification is intended to address the public health consequences of deficiencies in these nutrients, CHOICE believes that had FSANZ given adequate consideration to the public health implications of folate and iodine fortification it would not have permitted the voluntary addition to formulated beverages until the mandatory fortification proposals had been finalised. Instead, folate and iodine were among the vitamins and minerals that FSANZ allowed manufacturers to add voluntarily to formulated beverages.

Review of FSANZ assessment and approval processes

In the 2005/06 review of FSANZ assessment and approval processes nutrition and health claims were not considered to be issues of public health and safety. Rather health claims were considered consumer information only. It was on this basis that the FRSC working group justified the removal of all public consultation on health claims applications in order to encourage industry innovation. The report reasoned

that only matters directly relating to public health and safety should require a full, open and transparent assessment process.

For many years CHOICE has opposed the use of health claims on food labels. We believe that they are little more than marketing messages encouraging consumption of processed foods because of their potential health benefits. In reality, it is unlikely that an individual product will deliver a health benefit. Yet, the food industry and regulators have previously defended health claims on food labels suggesting that they would assist consumers to make healthy choices thus improving public health.

In this case, authorities were selective in their interpretation of “public health and safety”. Authorities initially supported the use of health claims because of the potential public health benefits. Later authorities suggested that health claims provided consumer information only, in order relax regulatory measures.

General comments

CHOICE acknowledges that FSANZ has recently employed a public health nutritionist. We hope that this will assist FSANZ to better address the broader public health consequences of food regulatory decision-making. However, there also needs to be greater public health consideration at the policy development level. CHOICE believes that defining “public health and safety” would ensure that “public health and safety” addresses more than just food safety and food-borne illness.

Increasingly, regulatory decisions are based on an analysis of the impact of regulation on business, consumers and governments. However, there are inconsistencies between the level and type of information available to assess the costs and benefits to industry compared to information available to assess the impact on public health and consumers. Businesses may invest in collecting cost-benefit information but it is often left to government agencies to collect data on the positive or negative impacts on public health and consumers. CHOICE believes there is considerable underinvestment in collecting public health and consumer data. This results in one-sided analyses of the impact of food regulation because costs and benefits to business are more easily quantified and more likely to be collected.

There is no ongoing investment in the collection of public health and consumer data needed to inform food regulation. The last extensive collection of data on Australians’ food consumption patterns was the 1995 National Nutrition Survey. Now 12 years old, this data is outdated yet it is still used to inform food regulatory decisions such as selecting appropriate foods for mandatory fortification. The Commonwealth Government and the Australian Food and Grocery Council have funded similar research but the first stage of research is limited to children only so it will not provide detailed information about the food consumption habits of all Australians.

As previously mentioned FSANZ is currently considering proposals for the mandatory fortification of folate and iodine to address the health problems associated with deficiencies in those nutrients. Both proposals are yet to be finalised but the latest advice from FSANZ suggests that bread will be fortified with both folate and iodine. FSANZ and state food and health authorities can assess the

extent to which bread manufacturers comply with the new standard yet there has been no funding committed to assess the intended impact of mandatory fortification on the health of the target groups and any potential adverse impact on non-target groups.

Closing remarks

CHOICE welcomes the opportunity to provide these comments on the proposed amendments to the *Food Standards Australia New Zealand Act 1991*. We hope that the issues raised in this submission will be given due consideration.

Some of the proposed legislative amendments have considerable implications for the way in which FSANZ conducts its assessment and approval processes and the level of consultation FSANZ will be required to undertake. This will have significant implications for CHOICE and its capacity to advocate on behalf 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 Australian 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. We agree that FSANZ processes should not unnecessarily stifle innovation or unjustly limit the legitimate activity of business; however the public health and consumer objectives of food regulation should not be undermined in order to achieve this.

Should you wish to discuss any of the issues raised in this submission please do not hesitate to contact CHOICE's senior food policy officer Ms Clare Hughes on (02) 9577 3375 or at chughes@choice.com.au.