



Submission to the

**Productivity Commission
Draft Research Report**

on

**THE ANNUAL REVIEW OF
REGULATORY BURDENS ON BUSINESS:**

Manufacturing and Distributive Trades

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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.

Introduction

CHOICE appreciates the opportunity to provide the following comments on the Productivity Commission's Draft Research Report on the Annual Review of Regulatory Burdens on Business. While this report covers the regulatory burden on a range of manufacturing businesses, this submission will focus solely on food regulation, based on CHOICE's years of advocacy work in this area.

Food regulation has long been one of CHOICE's key policy priority areas. For many years we have worked with regulators, enforcement agencies, governments, industry and other non-government organisations to 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.

As such, this submission will:

- comment generally on CHOICE's view of regulation;
- discuss the objectives of and responsibility for food regulation, including the potential for inconsistencies between state and territory and Commonwealth government regulation;
- examine the role of food regulation in protecting public health and consumer interests;
- outline the need for government regulation and better enforcement of health claims and other food labelling requirements; and
- provide some comment on the processes of developing and amending food regulation.

General comments on regulation

CHOICE is aware that regulation is increasingly being subject to scrutiny in order to minimise the negative impact of regulation on business. CHOICE previously provided

a submission to the Australian Government's Review of Regulatory Burden on Business. We have previously provided submissions to other reviews of food regulation such as the Bethwaite Review and the Victorian Competition and Efficiency Commission (VCEC) review of food regulation in Victoria, as well as reviews of the Food Standards Australia New Zealand (FSANZ) processes and the *Food Standards Australia New Zealand Act 1991*.

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, ineffective and unenforced regulation can 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 the notion that 'red tape' 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 Productivity Commission review of the regulatory burden on food business 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.

Clarifying the objectives of and responsibility for food regulation

The *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) outline the objectives of food regulation as:

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.

In Australia, food regulation is established by Food Standards Australia New Zealand (FSANZ). FSANZ maintains and amends the Australia New Zealand Food Standards Code (the Code) under the guidance of the Australian New Zealand Food Regulation Ministerial Council (Ministerial Council).

It is the responsibility of the state and territory governments to enforce the Food Standards Code. This is done through state government food acts. CHOICE believes

that confusion over the responsibilities of state governments and their relevant enforcement agencies lies partly in the fact that the FSANZ objectives are not replicated in all state government food acts. If a food act does not articulate the role of food regulation in protecting public health, providing consumer information and preventing misleading and deceptive conduct then there will inevitably be confusion as to the extent to which state government agencies are responsible for these aspects of food regulation.

The 2007 VCEC review of food regulation in Victoria recommended clarification of the objectives of food regulation and accountability between levels of government, particularly at the state government level. CHOICE was particularly concerned that the VCEC report suggested that no Victorian agency had specific responsibility for enforcing food labelling laws. Given the number of state government agencies responsible for food regulation and enforcement in Victoria, CHOICE agreed that there needed to be clarification of the objectives of food regulation in Victoria and the responsibility of each agency in achieving these objectives. It is essential that state government food acts replicate the three primary objectives of the FSANZ Act, to ensure that they appropriately fulfil their role of enforcing the Food Standards Code.

Consistency between state and territory and Commonwealth government regulation

CHOICE acknowledges that there may be inconsistencies between Commonwealth and state and territory regulations that place undue burden on 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 division of responsibilities between state and territory and Commonwealth governments for regulating and enforcing food standards may result in duplication of regulation or inconsistencies. CHOICE agrees with the principles of minimising duplication and addressing inconsistencies provided that food safety, public health and consumer protection requirements are still met.

As a result of the Food Regulation Review (the Blair 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 are developed these industries were governed primarily by state-based regulation.

The seafood and poultry primary production and poultry standards was the first to be developed, and similar standards for raw milk products, egg and egg products, dairy and poultry meat are currently being developed. CHOICE understands that there is some uncertainty among industry groups and enforcement agencies about the implementation and enforcement of these standards. CHOICE asks that issues of enforcement and implementation are clarified and clearly articulated to all stakeholders so that the new primary production and processing standards do not cause further confusion or unnecessary burdens for businesses and enforcement agencies.

Food regulation and public health - beyond food safety

In *Section 3.5 – Food regulation and public health*, the Productivity Commission correctly points out that “food regulation may not be the only, or most efficacious, means of meeting national health objectives”. A wide range of strategies should be used to address diet-related conditions such as obesity, heart disease, Type-2 diabetes and some cancers as well as nutrient deficiencies.

However, food regulation must support other public health strategies to reduce the burden of diet-related disease. Food regulatory decisions – when made without regard to public health implications – have the capacity to undermine public health initiatives.

CHOICE believes that defining “public health and safety” in the FSANZ Act and the subsequent Food Acts would help to ensure that “public health and safety” addresses more than just food safety and food-borne illness. Despite the fact that “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 immediate food safety risks 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 \$21 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 any Commonwealth government 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 outlined below suggest that food policy and regulatory decision makers do not give adequate consideration to obesity prevention and the long-term public health and nutrition implications of food regulation. Given that the state and territory governments have a significant role in accepting FSANZ recommendations it is vital that State Ministers are aware of the public health implications of FSANZ decisions.

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

Formulated beverages

The Ministerial Council has approved the production of formulated beverages in Australia. These water-based beverages can 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 has set limits on the sugar content of formulated beverages but it is 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 intrinsic and added sugars are 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 runs counter to public health efforts that encourage consumers to reduce their 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 sugary foods and drinks to be marketed as healthy products 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. Mandatory folate and iodine fortification is intended to address the public health consequences of deficiencies in these nutrients. Therefore, 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.

Health claims

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 Food Regulation Standing Committee (FRSC) working group justified the removal of all public consultation on health claims applications. 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”. Agencies that initially supported the use of health claims because of the potential public health benefits later suggested that health claims provided consumer information only, in order to justify relaxing regulatory measures and removing statutory requirements for public consultation.

Folate fortification

CHOICE understands that some food industry groups are concerned that the mandatory fortification of bread making flour with folic acid represents the use of food to address a public health problem in the absence of other public health measures. While CHOICE does not disagree with the principle of fortifying foods to address certain nutrient deficiencies that are widespread throughout the population, we share the concerns that mandatory fortification was not presented as part of a broader public health strategy to prevent neural tube defects through other initiatives such as the promotion of folic acid supplement use and health promotion campaigns encouraging the consumption of food naturally rich in folic acid.

Having said that, CHOICE believes that if a nutrient deficiency is significant enough that fortification is considered to be an effective public health strategy to address it, we believe that it should be mandatory rather than voluntary. Voluntary fortification is reliant on industry uptake of fortification permissions. If uptake of voluntary fortification permissions is limited then voluntary fortification will not successfully address the deficiency.

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.

Regulation of health claims

The VCEC report suggested that FSANZ failed to give adequate consideration to a voluntary code of conduct for regulating health claims. It also went on to propose that the upcoming review of country of origin labelling requirements should look more broadly at all labelling requirements with a view to considering the cost effectiveness of alternatives to mandatory requirements. This is intended to reduce the regulatory burden on business and at the same time promote innovation.

CHOICE acknowledges that the Productivity Commission did not make any similar recommendations, despite the report outlining a number of industry concerns in this area. While we are not opposed to self-regulatory and co-regulatory measures in principle, our experience in with the regulation of food labelling requirements suggest that voluntary measures are not sufficient to provide consumers with a wide range of information that consumer require about the food they eat.

Our experience in a range of industries is that there is a danger that self-regulatory arrangements can destroy the essential competitive neutrality of a simple, clear and effective regulation; where the monitoring and/or penalty arrangements are inadequate, unethical businesses are able to obtain an advantage over those that more closely adhere to the letter and spirit of the self-regulatory arrangements.

While not proposed in the current report, a self-regulatory scheme would be a regression in the level of consumer protection at a time when there is already sufficient evidence of non-compliance^{2 3}. It would also fail to recognise the vital consumer protection role that mandatory food labelling requirements currently play.

Nutrition and health claims encourage consumers to purchase a particular product because of the nutritional or health benefit that can be gained. If such claims are misleading or factually incorrect then consumers may not be making healthier choices and in fact over the long term could be making choices that are harmful to their health.

Misleading nutrition and health claims have the capacity to impact on the health of consumers. For this reason, strict regulation must be in place to deter manufacturers from using misleading or unsubstantiated claims to market foods.

Nutrition content claims are currently regulated by the Code of Practice on Nutrition claims in food labels and in advertisements (CoPoNC). It is a voluntary code that was intended to be enforced by a food industry organisation yet CHOICE is unaware that any enforcement activity exists and we continue to see % fat free claims that contravene CoPoNC. We believe that non-regulatory approaches will not provide sufficient disincentive for manufacturers and marketers who want to use misleading and unsubstantiated claims to appeal to consumers.

In a previous submission to FSANZ, CHOICE called for nutrition content claims to be regulated in the new standard on nutrition, health and related claims rather than the voluntary code. Public health groups also supported this. CHOICE is pleased that FSANZ has since proposed that the nutrient claims currently defined in CoPoNC should be included in the proposed nutrition, health and related claims standard elevating it from a voluntary industry code to mandatory government regulation. A government standard is consistent with the three objectives of food regulation and will therefore provide better consumer protection and prevent any negative health impacts of inappropriate nutrition and health claims.

The VCEC suggested that a more relaxed approach to the regulation of health claims would meet consumer demand for healthier food, provided they have confidence in the regulatory structures. CHOICE is unconvinced that there would be consumer confidence in a regulatory system that places the responsibility for monitoring and enforcing food labelling claims with the group who stands to benefit most from

² Food Standards Australia New Zealand (2004), *Food Label Monitoring Survey: July 2002 – December 2003*.

³ Williams, PG (2005), *Communication health benefits – do we need health claims?* Faculty of Health and Behavioural Sciences – Papers, University of Wollongong. Accessed 15 June 2007.
<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1010&context=hbspapers>

making false and misleading claims. In fact there is research which suggests that consumers do not trust manufacturers' health claims and agree that government approval should be obtained before they are permitted to be made³.

Food labelling standards

CHOICE believes that disclosure of product information on food labelling shouldn't be seen as a substitute for regulating industry practices. It is often stated 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. Interestingly, many manufacturers have no problem changing labels to advertise the latest promotion or competition or to add new marketing claims.

CHOICE supports all the current 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, genetic modification status, country of origin information and 'organic' and free range' labelling also require regulation to ensure that consumers are getting what they pay for.

Another outcome of the Blair Review of food regulation 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. 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 little 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.

As stated above, CHOICE does not support a non-regulatory approach to food labelling requirements. There has been considerable progress in relation food labelling over the last 20 years and suggestions to explore non-regulatory approaches fail to

³ As above

acknowledge the extent to which mandatory food labelling information provides consumer protection and assists them in making informed choices.

The box below illustrates the changes in food labelling that CHOICE has been involved in since the 1970's which have resulted in better consumer information about food.

What's in the box?

At the present time, government and industry are examining the need and desirability for nutrition labelling in Australia," said the CHOICE editorial of May 1975. We campaigned, along with many others, for the right of consumers to make an "intelligent choice" when buying packaged foods. We argued, "the label should tell [consumers] what it is, how much there is of it and what it costs." In the late 1970s CHOICE made the assertion that 'you get more information on pet food labels than on human foods'.

Much campaigning saw a number of breakthroughs. Date stamping is something we now take for granted. In 1975 it was a battleground. "The Grocery Manufacturers of Australia countered our request for open date stamping with the standard response that further labelling will cost the consumers more. Since most manufacturers already stamp products with the date of production in code," said CHOICE, "the simple decoding of these date stamps will not involve any extra expense."

In 1978 'ingredient labelling' was implemented and consumers could see ingredients listed on the label in descending order of proportion.

A significant change occurred in 1984 when the National Health and Medical Research Council (NHMRC) amended its constitution to include two consumer representatives and two industry representatives on its committees. CHOICE was invited onto the nutrition committee and the food standards committee, among others. This gave us the opening to comment on draft food standards, for example.

After a four-year campaign, in 1988 nutrition information panels (NIPs) became mandatory for any food for which a nutrition claim was being made, such as 'low fat' or 'low in salt'. These panels, although limited in application and coverage, would not have come about at the time if it wasn't for the extensive efforts of CHOICE. We were the driving force behind the introduction of NIPs. Indeed, the food industry was dead against these panels appearing on food labels.

In 1999 we argued once more that nutrition information panels (NIPs) should appear on all packaged foods, not just those which made a nutrient claim such as low fat, high fibre or salt reduced. Unbelievably, if a food did not make a nutrient claim then it would escape the requirement for a NIP.

The campaigning effort, sustained over 30 years and right up to today, produced strong gains for consumers. We now have labels on packaged foods which generally provide consumers with:

- Net weight of the food inside
- A listing of ingredients in descending order
- Nutrition information panels - mandatory for all packaged foods
- Separation of saturated fat from 'total fat' and sugar from carbohydrates
- Separation of artificial flavours from natural ones
- Separation of sugar as a distinct listing
- Allergy information
- 'Use by' dating (where there may be a food safety issue) or 'best before' dating (for foods where quality deterioration is the main problem)

- Correct storage information (e.g. refrigeration)

While there remain areas of concern, exemption and manufacturer cunning, CHOICE will continue to seek improvements to food labelling, especially in the context of the current debate on obesity.

Source: Where would you be without CHOICE? CHOICE achievements, 1996 - 2006 (CHOICE, 2007)

CHOICE acknowledges that some consumers may have difficulty interpreting nutrition information on food labels and using it to make an informed choice. We are also aware that some food manufacturers are presenting different nutrition information on the front of food packages. We understand that FSANZ will be conducting a review of food labelling requirements and that nutrition information will be within the scope of this review. We are also aware that a FRSC working group is considering various front of pack nutrition labelling schemes such as the scheme favoured by the Australian Food and Grocery Council and Kellogg's, and the traffic light labelling system that was developed by the UK Food Standards Agency.

CHOICE welcomes any investigation and consumer research into labelling systems that provides nutrition information that better assists consumers. However, if the ultimate aim is to empower consumers to make healthier choices and reduce the impact of obesity and diet-related diseases on our health system and economy, then we need to go for a system that helps the greatest number of consumers – not the one that causes the least offence to the food industry and its bottom line.

Enforcement of health claims and food labelling standards

There are inconsistencies in the way regulation is enforced across jurisdictions, particularly in relation to food labels. For example, one state government might be interested in policing country of origin labelling while another may see health claims as an enforcement priority.

Consumers should be able to expect the same level of protection and regulatory action regardless of where in Australia they live. Yet the reality is that different enforcement priorities and different interpretation of food standards means that enforcement action is not consistent across states and territories.

There are benefits in exploring the capacity for a Commonwealth agency to take responsibility for enforcement of food labelling. An area that could be used to pilot a single regulator approach is the new nutrition, health and related claims standard. A Commonwealth health claims “watchdog” has been established but it is currently little more than a single mailbox where complaints can be directed then distributed to the relevant state or territory enforcement agencies for action.

CHOICE believes that the Commonwealth health claims watchdog should be responsible for pro-actively monitoring the use of nutrition and health claims and compliance with the new regulation, and undertaking enforcement action where breaches are detected. However, we believe that such a regulator would require

nutrition and health expertise as well as adequate funding to undertake pro-active compliance monitoring.

There is justification for considering a more unified approach to other aspects of food labelling such as country of origin labelling, nutrition information panels and ingredients lists. Many packaged food products manufactured in Australia or imported into Australia are sold in a number of states and territories. Food labelling requirements are established by a Commonwealth regulator (FSANZ) and the same regulations apply to all manufacturers regardless of where they are located. Therefore, if a product breaches food labelling laws it is likely to affect consumers across Australia not just those who live in the jurisdiction where that manufacturer or distributor is based.

The cost of regulation

Increasingly, regulatory decisions are based on an analysis of the impact of regulation on business, consumers and governments. CHOICE agrees that such analyses are vital in developing and assessing regulation. 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.

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. The lack of evidence of detriment or benefit for consumers is often used to support an argument that there is no detriment or benefit to consumers in regulating (or not regulating) a certain aspect of the food supply.

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 13 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 previous Commonwealth Government and the Australian Food and Grocery Council funded similar research but the first stage of this research is limited to children only so it will not provide detailed information about the food consumption habits of all Australians. A similar survey of adults is planned.

As previously mentioned, FSANZ has considered proposals for the mandatory fortification of folate and iodine to address the health problems associated with deficiencies in those nutrients. The Ministerial Council approved the addition of folate to bread making flour and while the iodine fortification proposal is yet to be finalised FSANZ's preferred approach is for iodised salt to replace non-iodised salt in bread. While FSANZ and state food and health authorities can assess the extent to which bread manufacturers comply with the new standard, 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.

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 and/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 have improved consumer input into the FSANZ decision making processes. 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 effecting consumers.

FSANZ has also established new positions in the area of social research and public health nutrition which has increased the capacity to carry out consumer research and improved the extent to which FSANZ considers the public health and nutrition impact of proposed regulations.

The FSANZ assessment and approval processes were reviewed in 2005 and a number of amendments were made to the FSANZ Act to streamline the assessment and approval process. While we see merit in introducing new process to expedite the process of making minor changes to the Food Standards Code (for example fixing typographical errors) other changes will 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 for example, remove public consultation all together. In CHOICE's opinion this threatens the integrity of the FSANZ process and undermines its primary objectives. CHOICE believes that such changes place the interests of the food industry above the interests of the consumers that FSANZ is charged to protect.

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. They claim that these reviews unnecessarily prolong the standard development process, and prevent the commercial benefits of being the first to market with a new innovation. Previous applications relating to the addition of phytosterols and calcium to food have been cited as examples of this.

We are not aware of any case where consumers have been disadvantaged when application processes are delayed 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 by FSANZ. Limiting the capacity of Ministers to request a review would limit their ability to protect the interests of consumers.

CHOICE did not support a previous 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.

Closing remarks

CHOICE appreciates the opportunity to provide the following comments on the Productivity Commission's Draft Research Report on the Annual Review of Regulatory Burdens on Business. We agree with the principle of reducing unnecessary regulatory burden on food businesses. However, the primary objectives of food regulation are designed to 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.

The current review of the regulatory burden on food business must balance the need to protect consumers from unsafe foods and unscrupulous practices with the desire to reduce costs to food businesses and to promote innovation and development within the food industry.