



Submission to the

**REVIEW OF
FOOD LABELLING
LAW AND POLICY**

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1 ABOUT CHOICE

CHOICE exists to unlock the power of consumers. Our vision is for Australians to be the most savvy and active consumers in the world.

As a social enterprise we do this by providing clear information, advice and support on consumer goods and services; by taking action with consumers against bad practice wherever it may exist; and by fearlessly speaking out to promote consumers' interests – ensuring the consumer voice is heard clearly, loudly and cogently in corporations and in governments.

2 EXECUTIVE SUMMARY

The terms of reference indicate that this is a comprehensive review of food labelling laws and policy. This submission will draw the attention of the Review Panel (the Panel) to a broad range of issues that should be considered in ensure that food labelling continues to provide consumers with trustworthy and meaningful information about the food they eat.

This submission addresses:

- general comments about the review and the terms of reference;
- policy drivers for food labelling;
- the role of food regulation and food labelling in protecting and promoting public health, specifically health claims and front of pack nutrition labelling;
- the need for overarching food labelling policy to guide food labelling standards;
- key labelling elements that the Panel should consider;
- the role of governments in regulating and enforcing food labelling laws; and
- costs and benefits analyses of food labelling regulation.

2.1 *Key issues raised in this submission*

The key points raised in CHOICE's submission are summarised below.

1. Food labelling laws and policy are important to CHOICE, its members and consumers generally because they provide vital information and consumer protection.
2. Over the last 30 years CHOICE has worked with other consumer and public health groups to achieve a level of food labelling information that consumers now take for granted.
3. CHOICE sees this review as an opportunity to improve food labelling information for consumers and an opportunity to streamline the administration of food labelling systems provided this can be done without compromising consumer welfare objectives. We are however concerned that the stated intention to reduce regulatory burden could threaten the integrity of the information that is currently provided on food labels.

4. The health and interests of consumers are the primary objectives of food regulation, including food labelling. They should remain the primary focus of this review of food labelling laws and policy and should not be sacrificed in an effort to reduce regulatory burden on business.
5. CHOICE seeks further information about the review process, more specifically the timeframe the Panel will work towards, further opportunities for consultation, and the Panel's plans to engage consumers.
6. CHOICE urges the Panel to consider food labelling law in the broader context. This includes the *Food Standards Australia New Zealand Act 1991* and associated state and territory food acts, the Australia New Zealand Food Standards Code (the Food Standards Code) and state and territory variations; the *Trade Practices Act 1974* and state and territory fair trading laws; Australian Competition and Consumer Commission (ACCC) guidelines and actions relevant to food labelling; and cosmetic and therapeutic goods legislation that may overlap with or result in gaps in food labelling laws. Some non-mandatory codes and standards such as the Code of Practice on Nutrient claims in food labelling and in advertisements (CoPoNC) and the new Australian Standard on Organic and Biodynamic Products, will also be relevant.
7. CHOICE seeks clarification as to whether advertising is considered within of the broader definition of 'food labelling', and therefore whether food advertisements are within the scope of this review.
8. Policy drivers for food labelling will come from a multitude of sources – government, academia, food industry, the public health and medical community and other non-government organisations. CHOICE believes that consumers should be the most important policy driver as food labelling is ultimately a medium for communicating with consumers.
9. Different consumers will value and prioritise different elements of labelling information. For some consumers food allergen labelling will be the highest priority. For others, information about country of origin labelling or nutrition content will be more important.
10. Food regulation is about more than food safety. The first objective of food regulation is the protection of public health and safety. While 'public health' is a broad concept, the term 'public health' is not defined in food regulation and this has often resulted in a narrow interpretation of this objective focussing on short term food safety risks such as food borne illness and contaminants. CHOICE urges the Panel to consider how a definition of 'public health' would enhance the ability of food labelling laws and policy to protect and promote public health.
11. The primary objectives of FSANZ are to protect public health and safety, provide consumer information and prevent misleading conduct. Food labelling laws should not be based solely on the protection of public health and safety. An overarching food labelling policy is needed to reflect the broader consumer

protection role of food regulation and food labelling in providing a range of information about food products,

12. CHOICE urges the Panel to investigate FSANZ's legislative responsibility to develop food labelling standards for the purpose of providing consumer information on issues other than health and safety, and if necessary recommend legislative amendments to give them this responsibility.
13. CHOICE urges the Panel to consider introducing or improving the following labelling elements: front of pack nutrition labelling, nutrition and health claims regulation, trans fatty acid content, labelling of foods derived from genetic modification and nanotechnology, country of origin labelling, food additive information, products labelled as 'organic', 'biodynamic' or 'free range', and labelling to encourage sustainable choices.
14. CHOICE recognises that the responsibility of states and territories to enforce food labelling laws can create inconsistencies and duplication, placing unnecessary administrative burden on businesses. CHOICE supports the consideration of a national approach to food labelling, provided any national agency is adequately resourced, staffed by people with relevant food and nutrition expertise, and charged with proactive monitoring and enforcement of food labelling laws.
15. CHOICE does not believe in regulation for regulation's sake, nor that government regulation will always been the best approach. However, we do not believe that self-regulatory approaches to food labelling will provide adequate protection for consumers and they risk undermining consumer confidence in the food supply as food businesses stand to gain from codes that set weak labelling standards or are not adequately policed. Lack of industry co-operation in enforcing the Code of Practice on Nutrient claims in labels and in advertisements suggests that the food industry will not take self- or co-regulation seriously. CHOICE believes that government regulation of food labelling offers the best consumer protection and will maintain consumer confidence in the food supply.
16. There is considerable underinvestment in collecting the public health and consumer data needed to assess the costs and benefits of food labelling laws. Without this data, cost-benefit analyses are likely to give more weight to the costs and benefits that affect the food industry because the food industry is more likely to collect cost-benefit data. CHOICE urges the Panel to consider what investment is needed to ensure that decisions about food labelling adequately consider the costs and benefits to consumers.
17. Food labelling can help or hinder healthy choices. CHOICE urges the Panel to consider the role of food labelling in preventing overweight and obesity and other diet-related diseases such as cardiovascular disease, Type 2 diabetes, hypertension and certain cancers by enabling consumers to easily identify healthy foods.
18. CHOICE does not support permitting nutrition and health claims on food labels. Given the proliferation of these claims in recent years, regulation is vital. If health claims are to be permitted, CHOICE urges the Panel to support the rapid finalisation and implementation of the proposed FSANZ standard on nutrition

health and related claims. However, we believe that the proposed nutrient profiling system should be applied to all products carrying nutrition and health claims – not just products carrying health claims – so that these claims cannot be made on unhealthy foods.

19. CHOICE supports the development of one mandatory front of pack nutrition labelling (FOPL) scheme to help consumers identify healthier foods. Any mandatory FOPL scheme introduced in Australia should assist the greatest number of consumers to make healthy choices at a glance and reduce the impact of obesity and diet-related disease on the health system and our economy. Consumer research in Australia and the UK suggests that traffic light colours are an important part of an effective front of pack labelling scheme.
20. CHOICE appreciates the opportunity to raise these issues with the Panel and looks forward to further opportunities to participate in the Review of Food Labelling Laws and Policy.

2.2 *Opening remarks*

CHOICE appreciates the opportunity to provide this initial submission to the Review of Food Labelling Law and Policy. Food regulation has long been one of CHOICE's priority policy issues. Food labelling is particularly important to CHOICE, its members and consumers generally.

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 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.

Over the last 30 years CHOICE has worked with other consumer and public health groups to achieve food labelling laws that provide consumers with vital information about what's in their food, how healthy it is, and where and how it was produced.

Given the considerable progress in food labelling that has been achieved – largely in response to advocacy by consumers and by public health and consumer groups over the last 30 years despite constant opposition from the food industry to new food labelling laws – CHOICE believes that suggestions to explore non-regulatory approaches fail to acknowledge the extent to which mandatory food labelling information provides consumer protection and assists consumers to informed choices.

The box on the following page 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)

3 GENERAL COMMENTS ON THE REVIEW

CHOICE sees this review as an opportunity to deliver better food labelling information to consumers by improving labelling elements that aren't working well and introducing new labelling information to help consumers make more informed choices about the foods they eat. However, we are mindful that this review has been initiated by the Commonwealth of Australian Governments (CoAG) Business Regulation and Competition Working Group as part of its mandate to reduce unnecessary regulatory burden on businesses.

CHOICE supports action to streamline the regulatory system where doing so does not compromise consumer welfare, however we are concerned that this review could threaten the food labelling laws and information that we have fought hard to achieve and that many consumers now take for granted. We trust the Panel will ensure that the review does not sacrifice public health and consumer demands for informative labels that consumers can trust, in favour of watered down labelling laws and policies that some in the food industry prefer.

3.1 *The review process*

CHOICE looks forward to learning more about the review process and additional opportunities for stakeholders, including consumers, to have input into this review. Food labelling laws place restrictions on food businesses, but this is done in order to protect the health and interests of Australian and New Zealand consumers.

Everyday, consumers rely on food labels to make healthy and informed choices about the food they eat. It is vital that the Panel makes every attempt to facilitate consumer participation in the review process, beyond simply inviting written submissions on terms of reference and discussion papers. Consultation with consumers, not just consumer groups, will be needed to understand which aspects of food labels consumers value most, what they would like to see improved, what additional information they need, and how consumers use and interpret food labels.

CHOICE would also like further information on the timeframe for the review. CHOICE appreciates the enormity of the Panel's task. Recommendations made by the Panel will have significant implications for consumers, and their ability to make healthy and informed choices confidently. The Panel will need a reasonable amount of time to make their deliberations but stakeholders should also be given sufficient time and opportunity to provide input.

3.2 *Scope of the review*

There is currently a somewhat piecemeal approach to regulating and enforcing laws governing food labelling information. Specific provisions set out in the Food Standards Code are established by FSANZ but interpreted and enforced by state and territory food or health authorities. These agencies often have minimal resources to enforce food standards and interpret standards differently.

States and territories may also establish additional regulation. Currently, the NSW Parliament is considering the introduction of a mandatory beef grading scheme which is likely to include rules for labelling beef to give consumers a better indication of the quality of the beef products they are buying. This would only apply to beef sold in NSW.

Recently CHOICE was involved in the development of a Standards Australia standard on organic and biodynamic products. This includes provisions on labelling organic and biodynamic food. It is not a mandatory standard but will provide some additional consumer protection from misleading use of the term 'organic' particularly when consumers are paying more for organic foods because they believe them to be a premium product. It would afford consumers a greater degree of protection if it were made a mandatory standard. One way of doing this would be to incorporate the Standards Australia standard in the Food Standards Code.

There are also voluntary industry codes and schemes that govern other aspects of food labelling. They include the Code of Practice on Nutrient claims in food labels and in advertisements (CoPoNC) and various organic certification schemes.

The preamble to the terms of reference refers to a "comprehensive review of food labelling law". CHOICE notes that there is a plethora of laws which impinge on food labelling and urges the Panel to consider labelling law in its broadest terms. The Panel should also consider whether it should extend its scope to include non-retail food products, for example branding of meat in abattoirs as this can influence how a product is labelled for sale.

In particular, Choice identifies the following laws:

- a. The *Food Standards Australia New Zealand (FSANZ) Act 1991*, the Australia New Zealand Food Standards Code including any state and territory variations from the Food Standards Code;
- b. State and territory food acts, and in particular those sections which deal with false description;
- c. Other state legislation, specifically the fair trading acts and primary industry acts and their regulations which can include specific labelling requirements, such as egg stamping in Queensland;
- d. Other Federal legislation, in particular the *National Measurements Act 1960* and *Trade Practices Act 1974* including areas of overlap between the Food Standards Code requirements and Australian Competition and Consumer Commission guidelines e.g. false representations of fruit content, and country of origin labelling provisions.
- e. Cosmetic and therapeutic goods legislation which may result in inconsistencies and overlaps with respect to health or therapeutic claims and warning statements.

We also request the Panel to confirm the extent to which it will consider advertising to be an extension of food labelling and therefore considered within the scope of the review. Proposed health claims regulation and the existing voluntary code on nutrient claims recognise that claims and representations made in advertising often reflect the claims used on food labels and vice versa. Representations made in advertisements (e.g. claims about health benefits, representations of fruit content and country of

origin statements) must comply with labelling standards and should not be misleading. CHOICE would like clarification that Panel will consider advertising in so far as it relates to food labelling standards.

4 FOOD LABELLING LAW AND POLICY

4.4 Policy drivers for food labelling

The terms of reference state that the Panel will be required to examine the policy drivers impacting on demands for food labelling. Policy drivers for food labelling will inevitably come from a multitude of sources. Voluntary food industry initiatives may lead to calls for governments to introduce regulation that protects consumers from potentially misleading claims e.g. % Daily Intake (%DI) labelling and health claims. Public health experts and health officials may call for labelling that promotes healthier foods e.g. traffic light labelling and nutrition information panels.

Farmers and primary industry officials may support requirements like country of origin labelling that help consumers to support local producers and companies. Environmental groups may advocate for labelling that helps consumers identify foods that are organic, not genetically-modified and do not contain nanoparticles, have a lower carbon footprint, and don't contain ingredients such as palm oil.

Food manufacturers may not want certain aspects of food labelling regulated if they predict it will inhibit innovation and marketing opportunities, or simply make it difficult to persuade consumers to accept an inferior product. Policy drivers also include other government strategies relating to public health, food safety, agriculture, trade, innovation, and environmental sustainability.

Finally, consumers are the most important policy driver for food labelling. Consumers demand informative food labels that help them to understand what they're eating. Food labelling serves many purposes, but primarily it is a vehicle for communicating with consumers and informing them about what is and isn't in their food; how nutritious it is; how and where it was produced; and how they can consume it safely.

When judging the value of specific elements of food labelling it is important for the Panel to remember that no two consumers are the same. Different food labelling information is important for different consumers.

- A parent of a child with a nut allergy will find allergy declarations important.
- Many other parents want to avoid feeding their children certain food additives that they believe affect their child's health or behaviour, so additive information is important for them.
- A consumer with heart disease may be encouraged to avoid fatty or salty foods. Nutrition information panels will help them do this.
- A person who chooses to eat a vegetarian diet will rely on ingredients lists to avoid animal products.
- A consumer who wants to support Australian farmers and growers will look for country of origin labels to seek out locally grown and produced foods.

4.2 Food regulation: more than just food safety

The three primary objectives of food regulation outlined in section 18 of the FSANZ Act 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.

First and foremost food regulation is about protecting the health and interests of consumers. This should remain the foundation of food regulation. Food regulation provides a set of rules and standards to which food businesses – farmers, producers, manufacturers and retailers – must comply in order to meet their obligation to consumers.

While CHOICE supports the above objectives outlined in the FSANZ Act, we have long been disappointed with FSANZ's interpretation of these and its duty to abide by them. Firstly, 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' in the FSANZ Act. This results in varying interpretations of this objective by regulators. In many 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 potential short-term health impact of food consumption rather than the long-term impact on the health and nutrition of individuals and populations. 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.

Secondly, CHOICE understands from FSANZ staff have received advice that these objectives are listed with cascading effect. This has alarming consequences for food labelling. We understand that FSANZ has been advised that it is only responsible for developing food labelling standards that meet the first objective to protect public health and safety. According to this interpretation, FSANZ would be acting outside its remit if it developed labelling standards that were for consumer information alone (e.g. country of origin labelling and labelling of GM foods) unless they have specific guidance from the Australian New Zealand Food Regulation Ministerial Council.

CHOICE is concerned that distinction (which does not appear to be adequately based in law) may result in watering down of food labelling information and a selective interpretation of 'public health and safety' in order to avoid establishing standards that provide vital consumer protection from misleading claims and important information about the food we eat.

An example of the impact of this interpretation is in the 2005/06 review of FSANZ assessment and approval processes for health claims. 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, on the basis 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 on the basis that these claims are little more than marketing messages encouraging consumption of processed foods on the basis of the potential health benefits of an ingredient. Yet, the food industry and some 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.

CHOICE urges the Panel to investigate this interpretation of the FSANZ Act and the responsibility of FSANZ in developing labelling standards. We believe that FSANZ has an important role to play in ensuring food labels provide consumers with trustworthy information about such things as country of origin, the use of ingredients derived from genetic modification and nanotechnology, and the presence of palm oil.

4.3 Overarching food labelling policy

This issue also highlights the need for an overarching food labelling policy that acknowledges the role of food regulation in providing consumers with food labels that allow them to make healthy and informed choices about the food they eat.

There is currently a dearth of Ministerial Council policy relating to food labelling. There are policy guidelines on specific labelling issues such as country of origin and health claims, but there is no overarching policy on food labelling that outlines underlying principles of food labelling regulation and the responsibility of FSANZ in developing food labelling standards.

CHOICE believes that the Australian New Zealand Food Regulation Ministerial Council (Ministerial Council) should establish an overarching food labelling policy that gives FSANZ the authority to develop labelling standards that not only protect public health and safety, but provides other labelling information that consumers need to make informed choices and ensures that labelling is not misleading. CHOICE urges the Panel to recommend any necessary legislative changes required to give FSANZ this authority.

4.4 Food labelling standards

CHOICE believes that disclosure of 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. On the other hand, most manufacturers have no problem changing labels to advertise their latest promotion or competition or to add new marketing claims.

An outcome of the Blair Review of food regulation which reported to government in 1998, was the removal of prescriptive 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.

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 does not feel that this was an adequate trade-off and is cautious of food labelling again being used as a substitute for effective food regulation.

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 canned tuna products in August 2003 we found a number of canned fish products with fish content as low as 46%.

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. While nutrition information panels disclose the nutrition content of foods for those consumers who seek this information, there is now an expectation that food labels should actively promote health choices. CHOICE supports this approach but recognises that this will require government regulation to ensure that consumers are not misled by biased marketing claims about supposed health benefit, and that front of pack nutrition information is presented in a way that is best understood by the majority of consumers.

With many consumers interested in how and where their food is produced, genetic modification status, the use of nanoparticles, country of origin information and 'organic' and 'free range' labelling also require regulation to ensure that consumers are getting what they pay for.

Increasing community awareness of the impact of food production and transport on carbon emissions means consumers will increasingly be looking for products that have been produced sustainably and have a minimal impact on the environment. This has led to new concepts and schemes such as carbon footprint, food miles, recycling, Fair Trade and Rainforest Alliance. Debate around the merits of some of these

concepts continues but manufacturers are responding by including claims and logos with varying degrees of authenticity.

CHOICE investigated the extent of misleading environmental or 'green' claims on non-food items in the supermarket in 2008 and found 637 green claims on 185 products. Food labels are a source of green claims as manufacturers realise that environmental claims are a new marketing opportunity. We urge the Panel to consider environmental claims on food labels in the course of the review.

4.5 *Priority areas for the food labelling review*

The list below reflects the issues that CHOICE believes must be addressed as part of the labelling review. This is by no means an exhaustive list of the food labelling elements that should be reviewed. We look forward to commenting on other labelling elements that are considered by the Panel and highlighted by other stakeholders.

Front of pack nutrition labelling: As discussed above, CHOICE supports a consistent mandatory front of pack labelling (FOPL) system to help consumers identify healthy foods and encourage manufacturers to improve nutrition content. Research shows that traffic light colours are an essential element of an effective FOPL system (a detailed discussion of FOPL can be found later in this submission).

Health claims regulation: CHOICE believes health claims are little more than marketing messages that potentially mislead consumers about the health benefits of individual products. While we oppose their use and would support a continued prohibition, we note that the use of health claims has proliferated despite the existing prohibition. Better regulation and/or better enforcement of the current law is required.

We also acknowledge that the Ministerial Council has asked FSANZ to develop a standard that permits nutrition and health claims. CHOICE supports the finalisation of the proposed FSANZ standard on nutrition health and related claims, but we believe it would be improved by applying the nutrient profiling system to nutrition claims, as well as health claims.

Trans fatty acids: CHOICE calls for the mandatory inclusion of trans fatty acids in nutrition information panels so that consumers can avoid foods that contain high levels of this unhealthy fat. We also support regulation that requires manufacturers to identify artificial trans fats such as partially hydrogenated vegetable oils to be highlighted in the ingredients list as sources of trans fats.

Labelling of genetically modified (GM) foods: CHOICE has long argued that current GM labelling laws fail to give consumers sufficient information about foods derived from genetic modification. Loopholes mean that highly refined products like oils are not identified as being derived from genetically modified products. This is particularly important now that GM canola is being produced in Australia. Oils derived from GM canola could be used in a range of products from cooking oils, spreads, baked goods and deep fried foods, but these foods won't need to be labelled as genetically modified.

CHOICE wants Australia's GM labelling laws strengthened so consumers can identify all products derived from genetic modification or containing GM ingredients, even when GM ingredients have been highly refined.

Foods derived from nanotechnology: The extent to which nanoparticles are present in food in Australia is not really known and we do not suggest that they are being used widely as ingredients or in packaging. Research and development into nanotechnology increases yet Australia lacks an overarching strategy and policy about the use of nanoparticles in consumer products.

CHOICE recognises that like genetic modification, nanotechnology can deliver potential benefits for consumers. But like genetic modification, there is much we don't know about potential harmful consequences of nanoparticles in food products. Australia has the opportunity to learn from experiences with GM labelling to ensure that consumers feel adequately informed about nanoparticles in food. CHOICE calls on the Panel to consider labelling of foods containing nanoparticles so that consumers can identify these foods.

Country of origin labelling: Public debate about the country of origin of food and consumer feedback received by CHOICE suggests that Australian consumers want to be able to identify Australian foods. Australian consumers appear to be more interested in the origin of their food than other consumer goods. Manufacturers know this and endeavour to highlight the 'Australian-ness' of their foods.

In addition to the two primary country of origin provisions contained in the *Trade Practices Act 1974*, consumers are faced with an array of claims on food labels including: "Manufactured in Australia", "Made in Australia from local and imported ingredients", "Made in Australia from imported and local ingredients" and "Australian Owned", each referring to different aspects of the product and a degree of 'Australian-ness'. The Food Standards Code sets out some additional country of origin labelling provisions. There are also endorsement campaigns and logos such as "Australia Made", 'Australian Grown' and 'AusBuy'.

It can be extremely difficult for consumers to judge the 'Australian-ness' of their food when faced with such an array of claims referring to different aspects of the product such as ingredients, ownership, production and manufacture. CHOICE supports further work to improve the clarity of country of origin information on their food to help consumers better understand where their food is coming from.

Food additives: CHOICE hears from many parents who are concerned about the effect of food additives on children. And of course, it is not just children who experience adverse reactions to specific ingredients or additives.

CHOICE recognises that the numbers of people who react to specific additives are a minority and therefore banning additives that cause adverse reactions in a few can be seen as an overreaction. But at the very least, consumers need to be able to easily identify the foods that contain their particular additive of concern so that they may avoid them.

CHOICE is aware that a labelling loophole exempts manufacturers from listing additives in ingredients that make up less than 5% of the final product. CHOICE wants this loophole closed so that consumers can avoid products containing additives that concern them. CHOICE also wants additives and functional ingredients to be clearly identified on the label either by their function or with their additive number.

Sustainable choices: As consumers become increasingly interested in the ethical and environmental impact of food production, manufacturing and distribution, manufacturers will inevitably use claims and endorsement schemes to convey this information. We predict that the Panel will be called on to consider specific schemes and labelling claims.

CHOICE sees this review as an opportunity for stakeholders to consider how this information can be conveyed to consumers in a trustworthy and meaningful way. The Panel should also consider the role of regulation in encouraging consumers to make sustainable and ethical choices, and be confident that the products that they're buying meet their expectations. CHOICE looks forward to considering specific examples that are put to the panel for consideration.

Legibility: CHOICE has many concerns with the current Food Standards Code which it would be pleased to bring to the attention of the panel as foreshadowed in the "matters for review" in the terms of reference. In particular, CHOICE has concerns with standard 1.2.9 which deals with legibility requirements for mandatory statements in labels. The editorial note in standard 1.2.9 states "The requirements of this standard will also not be met where prescribed information is printed in a small font so the statement cannot be read easily". The standard seems effectively unenforceable in the absence of an objective measure for "read easily", as there is no shortage of mandatory statements in food labels which cannot be read by many people, let alone read easily. Legibility issues are frequently raised by consumers who call the CHOICE call centre.

Alcohol labelling: CHOICE also disagrees with some of the labelling exemptions that apply to alcoholic beverages. Specifically, we believe that alcohol products should be required to carry nutrition information panels. Alcohol and sugar in alcoholic beverages contribute to energy intake. As consumers are encouraged to consume a healthy diet they should be able to assess the nutritional value of alcoholic beverages just as they would other foods and drinks.

5 REGULATING FOOD LABELLING

5.1 Enforcement of food labelling laws

CHOICE acknowledges that the shared responsibilities between state and territory and Commonwealth governments for regulating and enforcing food standards may result in duplication of regulation or inconsistencies. This may place undue burden on the food industry as food businesses that operate in a number of states and territories may also be required to meet different state and territory 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.

Consumers are entitled 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. For example, one state government might focus on policing country of origin labelling claims while another may see health claims as an enforcement priority

There are benefits in exploring the capacity for a Commonwealth agency to take responsibility for enforcing food labelling laws. CHOICE has previously proposed that this approach could be piloted using the new nutrition, health and related claims standard, once it has been finalised. A Commonwealth health claims “watchdog” has been established but it is currently little more than a mailbox where complaints can be directed then distributed to the relevant state or territory enforcement agencies for action.

There is justification for considering a more unified approach to enforcement of 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. A national approach could address this ‘home state rule’ imbroglio which places greater enforcement burden on authorities in states like NSW and Victoria where the majority of food manufacturers are located.

A national food regulation enforcement agency should be responsible for pro-actively monitoring the compliance with the food labelling laws and undertaking enforcement action where breaches are detected. Such a regulator would require broad expertise in food production and manufacturing, food regulation, food safety and nutrition, as well as adequate resources to undertake pro-active compliance monitoring.

One challenge will be determining where enforcement of food labelling begins and ends. Some food labelling statements or claims are linked to product composition, mandated or otherwise, so enforcement of labelling standards may also involve ensuring that the label is an adequate reflection of the product composition. Labelling and composition are regulated separately in the Food Standards Code, but are intrinsically linked. A labelling regulator might also ultimately become responsible for regulating product composition.

5.2 The role of government in regulating food labelling

CHOICE does not believe in regulation for 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 (or worse) 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 review of food labelling must balance the need to protect consumers from unsafe foods and unscrupulous practices in the food industry, with the desire to reduce cost on food businesses and to promote innovation and development within the food industry.

CHOICE is not opposed to industry self-regulation per se, but we are opposed to industry self-regulation of food labelling. A 2001 study commissioned by the Australia New Zealand Food Authority¹ (now FSANZ) demonstrated that consumers have a great deal of faith in governments policing what goes into food. They trust labels to be accurate as long as government is ensuring compliance and keeping manufacturers honest.

Government regulation is vital to maintain consumer confidence in food labelling and the food supply generally. A move towards self regulation is likely to undermine consumer confidence in the food supply and food label information. To date, the food industry has not demonstrated that it can be trusted to regulate food labelling, particularly claims about health and nutrition benefit. In just one example, the ACCC took action against Coca-Cola South Pacific Pty Ltd over misleading advertisements that aimed to dispel so called health 'myths' about Coca Cola².

The Code of Practice on Nutrient claims in food labels and in advertisements (CoPoNC) is a self-regulatory code that was intended to be administered by the food industry. The code was introduced in 1995 but has never been effectively enforced by the industry and we continue to see claims, e.g. '94% fat-free', which contravene this code. In response, FSANZ has proposed that nutrition content claims be included in the new mandatory standard on nutrition, health and related claims.

¹ Australian New Zealand Food Authority. (2001), *Food Labelling Issues: Qualitative research with consumers*.
<http://www.foodstandards.gov.au/newsroom/publications/evaluationreportseries/foodlabellingissuesconsumerresearchdecember2001/index.cfm> (accessed 17/11/09)

² Australian Competition and Consumer Commission. (2 April 2009), *ACCC acts on Coca-Cola myth-busting*, <http://www.accc.gov.au/content/index.php/itemId/867233/fromItemId/142> (accessed 20/11/09).

Co-regulation would be preferable to self-regulation provided it is backed by prompt and effective government intervention and that it is administered by an adequately resourced independent body, and included effective monitoring and significant penalties that act as a deterrent.

It is likely that the elements of food labelling considered appropriate by industry for self or co-regulation are voluntary marketing claims e.g. health claims and country of origin statements. Food manufacturers know that many consumers are looking for healthier foods and products that are Australian, and want to highlight the healthiness and 'Australian-ness' of their products. They stand to benefit financially from flouting self- or co-regulatory codes and making claims that aren't permitted.

Food advertising is regulated by a Commonwealth regulator (the Australian Communications and Media Authority) and an industry body (the Advertising Standards Bureau (ASB)). The ASB is responsible for the majority of complaints about specific advertisements. Yet by the time the ASB resolves a complaint an offending advertisement is likely to have been display or broadcast for some weeks. In the event that a complaint is upheld, the offending company will have reaped the financial benefits of being able to market its product to consumers while the complaint was being considered. Furthermore, in our opinion, the ASB is one of the most ineffective enforcement agencies operating in Australia and received a CHOICE Shonky Award in 2007.

5.3 Assessing the costs and benefits of food labelling regulation

During the course of the review, the Panel may be expected to consider the cost and benefits of specific food labelling laws. 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 14 years old, this data is outdated yet it is still used to inform food regulatory decisions such as selecting appropriate foods for mandatory fortification. In 2006, 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.

6 SUPPORTING PREVENTIVE HEALTH STRATEGIES

6.1 *Protecting public health*

The preamble to the terms of reference talks about reducing regulatory burden ‘without compromising public health and safety’. CHOICE is concerned that this suggest that protecting public health and consumer interests will be come secondary to industry interests, and the supposed burden that regulation places on business. As mentioned above CHOICE believes food regulation and food labelling laws need only be as burdensome as is necessary to protect public health and consumer interests, but the protection of public health and safety, the provision of consumer information and the prevention of misleading conduct should be the ultimate priorities.

CHOICE welcomes the Commonwealth Government’s commitment to preventing chronic disease such as overweight and obesity. Overweight and obesity have serious health consequences. Overweight and obesity are associated with increased risk of heart disease, Type 2 diabetes, arthritis, stroke, kidney disease and some cancers; placing an enormous burden on our health system and society in general³. The total cost of obesity in Australia in 2008 was as high as \$58 billion per year⁴.

There are many factors that lead to overweight and obesity – the nutritional quality and amount of food we eat; how active we are; the environments where we live, work, eat, learn and play. We need to take action on many fronts to stem and reverse the rising rates of overweight and obesity among Australia adults and children.

Preventative health programs – when designed and implemented well – make an enormous contribution to improving health and well-being. We’ve already seen preventative health strategies work in areas such as tobacco control, drink driving and skin cancer. Intervening early not only delivers health benefits by preventing chronic diseases before they develop, it also makes good economic sense.

Many cases of obesity and chronic diseases such as heart disease, hypertension, Type 2 diabetes and some cancers are in part the result of poor food choices. Information on food labels help to guide food choices – both good and bad. Food manufacturers use food labels to tell consumers selected information about the nutrition content or health benefits of their products. Food labelling laws and policy must be consistent with government strategies to prevent chronic diseases by displaying nutrition information more prominently and prohibiting marketing claims that may exacerbate poor eating habits by giving consumers one-sided messages about the healthiness of particular product.

³ National Obesity Taskforce. (2003), *Healthy Weight 2008: The national action agenda for children and young people and their families*. Canberra, Department of Health and Ageing.

⁴ Access Economics. (2008), *The growing cost of obesity in 2008: three years on*. Report by Access Economics Pty Limited to Diabetes Australia.

Fortification permissions, for example, which allow manufacturers to add specific vitamins and minerals to a particular type of product (e.g. formulated beverages) should also support healthy eating messages rather than allowing unhealthy foods to be promoted as a source of vitamins and minerals. CHOICE acknowledges that this may be outside the scope of the current review.

The Panel should consider the role that food labelling can play in preventing chronic diseases such as obesity, heart disease, Type 2 diabetes, hypertension and some cancers. It should also consider how food regulation or lack of regulation can undermine consumers' ability to identify healthy foods.

The panel should specifically consider how the following elements of food labels assist consumers to make healthy food choice:

- ***nutrition information panels*** disclosing the nutrient content of foods;
- ***ingredients lists*** telling consumers what's in their food and the levels of key ingredients;
- ***front of pack nutrition labelling*** including both %DI and traffic light labels, which aim to encourage healthier choices by placing nutrition information more prominently;
- ***nutrition and health claims*** highlighting the presence or absence of specific nutrients or supposed health benefits of particular products;
- ***nutrient profiling*** developed by FSANZ for the purpose of regulating health claims;
- ***trans fat labelling*** in nutrition information panels and ingredients lists; and
- ***serve sizes*** used in nutrition information panels and % DI labelling that are nominated by food manufacturers and can be manipulated to convey a more positive message about nutrition content.

6.2 *Health claims*

CHOICE is opposed to the use of nutrition and health claims on food labels as we believe that they are little more than marketing message giving consumers selected information about the health benefits of certain foods. However, we acknowledge that the Ministerial Council has directed FSANZ to develop a standard that would permit these claims.

The development of a new health claims standard dates back to 1993 when the then National Food Authority (now FSANZ) released a discussion paper on health claims in the context of functional foods. Development of the standard has proceeded at a glacial pace and some 16 years later consumers are still waiting for regulation that will protect them from misleading and unsubstantiated marketing claims about the supposed health benefits of consuming individual foods and drinks.

This standard is long overdue and CHOICE is disappointed that the progress that had been made with respect to this standard has been further delayed pending the outcomes of this review. CHOICE believes it will be an embarrassment if this review results in additional delays and leads to a watering down of the proposed FSANZ standard.

We have seen a proliferation in the number of products making claims about such things as the ability of oat bran to “lower plasma cholesterol”, milk that “has been specially formulated to improve the performance of the heart and cardiovascular system” and white bread with the “added benefit of Omega-3 DHA for early brain and eye development and heart health”. Yet consumers have no assurance that these claims are true or that they’re being made on products that are in fact healthy.

Despite our objections to the use of health claims, CHOICE has contributed to the development of a new standard since 1993, working with Food Standards Australia New Zealand, its predecessors and government, industry, public health and consumer stakeholders to achieve a standard that allows food manufacturers to highlight the supposed health benefits of their products but ensures consumers are not harmed by products making unsubstantiated and misleading health claims.

The proposed nutrition, health and related claims standard is needed to achieve all three objectives of FSANZ. The standard – particularly the nutrient profiling system that underpins it – would help to protect public health by preventing selected health claims on foods that are otherwise high in fat, energy and sodium and provide little other nutritional benefit. It will also prevent consumers being misled by claims that overstate health benefits of particular products and imply that products are healthy, when they aren’t.

FSANZ has proposed that the nutrient profiling criteria be applied only to foods carrying health claims. CHOICE wants foods carrying nutrient content claims to be subject to nutrient profiling so that only healthy foods can carry nutrient content claims, preventing consumers being misled by products carrying biased claims about the presence or absence of particular nutrients on unhealthy foods.

6.3 *Front of pack labelling*

Increasingly, food labels are being used as a vehicle for providing consumers with nutrition information, healthy eating messages, and advice about the potential health benefits of consuming particular foods. Factual nutrition information required by government and claims made by manufacturers to increase product sales compete for label space and the consumers’ attention.

CHOICE, along with other public health groups, strongly advocated for the introduction of mandatory nutrition information panels. Nutrition information panels were intended to provide consumers with information about what was in their food. They have enabled consumers to assess the nutrition content of packaged foods and compare products based on the particular nutrients of importance to them.

There are now increasing expectations that consumers should use food labels to make healthy choices, as part of a broader strategy to prevent obesity and diet-related diseases. The current nutrition information panel – its presentation and location – does not actively encourage consumers to make healthy choices, nor was it designed to. As a result there are now calls for Australia to introduce front of pack nutrition labelling to assist consumers to choose healthier foods.

CHOICE is aware that the Commonwealth government's National Preventative Health Taskforce (NPHT) has identified food labelling as an important part of any obesity prevention strategy. The NPHT pointed out that not only could an effective food labelling system guide consumers to make healthier choices; it could also provide the incentive for manufacturers to improve the nutritional content of their products. The NPHT also suggested that food labelling should help consumers to identify healthier food and drink rather than confusing them further or provide insufficient information about nutrition messages.

CHOICE welcomes the development of a front of pack labelling (FOPL) scheme that further assists consumers to identify healthier options and easily distinguishes them from foods that are high in fat, sugar or sodium. We believe that a scheme offering an element of judgement about the healthiness of individual products would be most helpful in assisting consumers to choose healthier foods. A scheme like this would also provide an incentive for the food industry to improve the nutrition content of processed and packaged foods.

Most importantly, any FOPL system developed in Australia should be one that best assists Australian consumers to make healthy choices and reduces the impact that obesity and diet-related diseases have on our health system and our economy, rather than one that causes the least offence to the food industry and its bottom line.

6.3.1 Principles for a front of pack labelling system

Below is a set of principles that CHOICE believes should underpin a front of pack nutrition labelling system.

Aims

1. The primary aim of front of pack labelling should be to assist consumers to identify healthier foods.
2. It should also provide an incentive for food manufacturers to improve the nutrition content of their products.

Development

3. It should be based on scientific criteria developed by independent experts and endorsed by relevant independent health and food authorities such as the National Health and Medical Research Council and Food Standards Australia New Zealand.
4. It should be based on independent consumer research conducted in Australia. International research may provide guidance on the range of potential nutrition labelling schemes however research must be conducted on Australian consumers to ensure that it is useful for the Australian population.
5. It should be developed in consultation with industry, consumers, health experts, enforcement agencies and communications experts.

Consumer benefit

6. It should be simple and easily understood at-a-glance by the majority of consumers including those who find nutrition information panels difficult to understand.

7. It should complement, not replace, nutrition information panels currently on the back or side of packs. This does not exclude possible refinement of the current nutrition information panel.
8. To avoid consumer confusion, there should be only one agreed nutrition labelling system rather than a variety of initiatives across the food industry.
9. It should be mandatory on all packaged foods that currently require a nutrition information panel, and could also be used by fast food chains with standard menu items, recipes and processes.
10. It should enable consumers to make comparisons between different products within the same food category as well as across different food categories.

Information

11. It should address only those nutrients of greatest public health significance such as energy, total fat, saturated fat, sugar, sodium and fibre. It should not include information about nutrients of lesser significance such as carbohydrates, protein, and other vitamins and minerals as too many fields may confuse consumers and draw attention away from the nutrients of greatest significance.
12. It should require all products to list information for all agreed nutrients. It should not allow manufacturers to display only those nutrients that present a product most favourably. For example, providing information on energy content alone is potentially misleading as it is important for consumers to understand the source of kilojoules – such as fats or sugars.
13. To enable consumers to make assessments at a glance, it should include an interpretive element such as traffic light colours and/or high/medium/low indicators depending on the levels of key nutrients in each product.
14. Ideally, there should be a limited number of food categories with separate criteria relevant to each category. Separate criteria might be developed for solid foods and drinks or liquid foods. Alternatively, consumer research may indicate that it would be more helpful to have more specific food categories e.g. cereal products, dairy products, extra foods.
15. The interpretive element should be based on the nutrient content per 100g/mL but may also include factual information such as the amount of each key nutrient per 100g/ml or per serve if a food. Guidance should be given about appropriate serving sizes to prevent manipulation of serving sizes designed to present front of pack nutrition information in the most favourable way.

Government support

16. It should be accompanied by a government-funded consumer education and health promotion campaign on healthy eating and how to use food labels to make healthy choices.
17. It should be easily enforced. Government funding should be allocated to monitor and enforce the simplified nutrition labelling scheme.

6.3.2 CHOICE's consumer research on front of pack labelling

In 2008, CHOICE – in collaboration with a number of public health groups including the Cancer Council – conducted consumer research to see which FOPL system was most effective in helping Australian consumers to make healthy choices. We surveyed 790

consumers who were responsible for grocery shopping in their household, asking them to identify the healthier of two products using one of four different systems.

The labelling systems were:

1. Traffic lights for total fat, saturated fat, sugars and sodium content;
2. Traffic lights for total fat, saturated fat, sugars and sodium content, and an additional traffic light for the overall healthiness of the product;
3. Monochrome % Daily Intake for all mandatory nutrients on the nutrition information panel (currently being used by some manufacturers and promoted by the Australian Food and Grocery Council); and
4. % Daily Intake for all mandatory nutrients on the nutrition information panel with traffic lights colours for total fat, saturated fat, sugars and sodium content.

There was overwhelming support among survey participants (90%) for a *consistent* front of pack nutrition labelling system. Of the four systems, consumers using the Traffic Light system were better able to correctly identify healthier products than consumers using the monochrome % Daily Intake system. Perhaps one of the most important findings was that consumers from lower socioeconomic groups were six times less likely to correctly identify the healthier product using the monochrome % DI system than consumers from higher socioeconomic groups. There was no such difference in consumers' ability to identify healthier products using the Traffic Light systems.

Our findings are consistent with results of similar consumer research conducted by the UK Food Standards Agency⁵ and the UK consumer group Which?⁶. Further information on our study has been provided with this submission and can be found at <http://www.choice.com.au/files/f133668.pdf>. An academic paper on this research was recently published in the *Health Promotion International* journal⁷.

Conversely, research by the Australian Food and Grocery Council suggests that many consumers say they use and understand the %DI system⁸. This research did not assess consumers' ability to use the system or compare it with other systems.

6.3.3 One consistent, mandatory FOPL system

CHOICE believes that FOPL should be introduced to assist consumers to identify healthier foods, as part of a broader strategy to prevent overweight and obesity and other diet related diseases. We believe that a single consistent scheme should be developed and that it should be mandatory on all packaged foods that are currently required to carry nutrition information panels. An Australian FOPL system needs to be developed by the government in consultation with a broad range of consumer, public health and food industry stakeholders. Policy guidelines must be developed in order to begin the development of a FOPL system.

⁵ Synovate. (2005), Quantitative Evaluation of Alternative Food Signposting Concepts, prepared for COI on behalf of Food

⁶ Which? (2006), *Campaign Report: Healthy Signs*, Consumers Association UK.

⁷ Kelly B, Hughes C, Chapman K, Chun-Yu Louie J, Dixon H, Crawford J et al (2009). Consumer testing of the acceptability and effectiveness of front-of-pack food labelling systems for the Australian grocery market. *Health Promotion International*. 2009

⁸ Australian Food and Grocery Council. (2008), *Nutrition labelling: The Daily Intake Guide*, <http://www.afgc.org.au/cmsDocuments/Fact%20Sheet%20Survey.pdf> (accessed 24/3/09).

A voluntary system risks allowing manufacturers to label only healthier products that are presented favourably and leave FOPL information off products if it implies that they are unhealthy. Similarly, if only some products in a category display a FOPL, consumers will not be able to compare products easily.

In the UK, front of pack labelling is not mandatory. This has resulted in front of pack information being displayed in a variety of formats, such as those shown below.



Already, Australian food manufacturers are choosing to place %DI information in different places on the front of the pack. They are also using different colours, fonts and shapes. Some manufacturers are choosing to display only the kilojoule content, others are displaying kilojoules, total fat, saturated fat, sugars and sodium, while many are also adding information about protein, carbohydrates, fibre and vitamins and minerals. The more variants that are used the more difficulty consumers will have comparing FOPL information. This could significantly undermine the success of FOPL in guiding consumers towards healthy choices if they find labels difficult to compare and interpret. The vast majority of participants in our study (90%) favoured a single consistent FOPL system.

Our research found that the FOPL system that consumers thought would be most useful was not the most helpful in practice. When survey participants were shown an example of all four FOPL systems and asked which would be easier to use more consumers thought the hybrid colour-coded %DI system would be easier to use. The table on the following page compares the percentage of participants who thought each system was easiest to use with the percentage of consumers who were able to correctly identify the healthier product using that system.

Predicted versus actual ease-of-use for identifying healthier foods

FOPL system	% of participants who thought that this system would be easiest to use	% of participants who correctly identified healthier foods
4 traffic lights	14	81
4 traffic lights + overall traffic light	22	78
Monochrome %DI	21	64
Colour-coded %DI	41	70

Non-interpretive systems such as the %DI require consumers to undertake onerous calculations and estimations of their likely intake of nutrients from all foods that they may eat throughout the day. Another weakness of the %DI system is that it is based on manufacturer-determined serve sizes that are open to manipulation and may not reflect the serve sizes that consumers eat in reality. In addition to this, the daily intake values on which the %DI system is based aren't relevant to the entire population as energy and nutrient needs vary depending on age, gender and physical activity levels, and during pregnancy and lactation.

7. CLOSING REMARKS

Once again, CHOICE appreciates the opportunity to provide this submission on the Review of Food Labelling Law and Policy. We trust that the Panel will give due consideration to the issues we have raised. We look forward to additional opportunities to provide input and assisting the Panel in its deliberation on how food labelling laws and policy can continue to protect the public health and provide trusted information that helps consumers make informed choices about the food they eat.

We look forward to finding out more about the review process, future opportunities for consultation and how the Panel intends to engage consumers (not just consumer groups) in its work on this very important consumer issue. Should you wish to discuss further any of the matters raised in this submission, please contact CHOICE's Senior Food Policy Officer, Clare Hughes on (02) 9577 3375 or at chughes@choice.com.au.