



**Submission to the  
Food Labelling Review Panel  
on the  
Issues Consultation Paper:  
Food Labelling Law and Policy Review**

**17 May 2010**



## 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.

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## Executive summary

CHOICE appreciates the importance of this review of food labelling. Not since the mid-1990's Blair Review of Food Regulation has Australia's food labelling laws and the food regulatory system been the subject of such broad and far-reaching review that will have enormous implications for consumers.

The consultation paper raises some issues that will be a source of contention among governments, businesses, public health and community groups – these include front of pack nutrition labelling, the consideration of a national approach to enforcement and the role of government in regulating food labelling. There is enormous pressure on the Panel to balance these competing interests.

CHOICE challenges the Panel to be bold in its recommendations, and courageous in bringing about fundamental changes to a regulatory system that's primary responsibility is protecting the health and interests of Australian consumers.

Outlined below are CHOICE's priorities for this review.

**1. Food labelling laws and policy should support preventive health strategies.** Food labelling has a vital health promotion role. Food labelling should assist consumers to make healthy choices as part of an overarching strategy to prevent overweight and obesity, and diet-related conditions such as heart disease, type-2 diabetes and some cancers. Key initiatives that would assist consumers to make healthy choices include:

- front of pack nutrition labelling involving traffic light colours, and
- better regulation of nutrition and health claims, underpinned by a nutrient profiling system

**2. An overarching food labelling policy should be developed to guide food labelling regulation.** This policy should set out the role of food labelling in:

- protecting public health and safety (including supporting preventive health strategies);
- providing adequate information relating to food to enable consumers to make informed choices; and
- preventing misleading and deceptive conduct.

**3. The term 'public health' should be defined in the *Food Standards Australia New Zealand Act 1991*, the *Food Standards Code* and related state and territory *Food Acts* to articulate the broad role of food regulation in promoting the long-term health of populations and population groups.** The definition used by the Australian Institute of Health and Welfare should be adopted, defining 'public health' as:



... the organised response by society to protect and promote health, and to prevent illness, injury and disability. The starting point for identifying public health issues, problems and priorities, and for designing and implementing interventions, is the population as a whole, or population subgroups.

Public health is distinguished from other roles of the health system by its focus on the health and wellbeing of populations rather than individuals. Public health programs are usually aimed at addressing the factors that determine health and the causes of illness, rather than their consequences, with the aim of protecting or promoting health, or preventing illness.

**4. Food labelling law and policy should recognise the consumers' right to know how and where their food is produced.** Food labelling standards should be improved to deliver:

- meaningful GM labelling laws that require labelling of all foods or ingredients have been derived through genetic modification;
- labelling of foods produced using emerging technologies (e.g. nanotechnology) to enable consumers to make informed choices;
- more detailed country of origin information, particular for meat, poultry, seafood, fruit and vegetables and products containing these ingredients; and
- consumer confidence in sustainability, environmental and animal welfare claims.

**5. More prescriptive standards could help to deliver food labelling information that is legible and readable for a broad range of consumer groups.** These groups include those with low-level vision impairment, consumers from culturally and linguistically diverse backgrounds, and consumers from lower socio-economic groups.

**6. Government oversight of food regulation is important to maintain consumer confidence in the food supply.** The food industry's track record indicates that self-regulation will not be sufficient to protect the health and interests of Australian consumers from misleading labelling claims about the content and healthiness of their food.

**7. A national approach to enforcing food labelling laws would improve consistency and provide greater consumer protection.** Food Standards Australia New Zealand and the Australian Competition and Consumer Commission are two existing agencies that could take on this role.



## 1. Context

CHOICE appreciates the opportunity to provide the following comments on the latest Issues Consultation Paper on the Review of Food Labelling Laws and Policy. CHOICE was pleased to see that many of the issues we had raised in our previous submission to the Panel have been addressed in the consultation paper.

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.

The consultation paper raises many significant issues about the information that appears on food labels, how consumers use this information to make healthy and informed choices, and the extent to which governments should be responsible for regulating food labels and if so which government agencies should be responsible. It also poses a series of 39 questions each of which could have considerable implication for the quality of information on food labels that consumer confidence in food labelling and the food supply in general.

The Executive Summary outlines the key issues CHOICE believes are priorities for this review of food labelling. In the following sections we address each consultation question, highlighting key recommendations where relevant. The Panel will note that some points had already previously been made in CHOICE's previous submission, however we felt it was necessary to reiterate these arguments in the context of the consultation questions and because unlike CHOICE's previous submission, this submission will be on the public record.



## 2. Food labelling - overview

### Q1. To what extent should the food regulatory system be used to meet broader public health objectives?

There is no question that food regulation plays a vital role in supporting public health objectives. Food regulatory decisions influence the food we eat: how safe it is, what ingredients can be used, what nutrients can be added, how healthy it is, the claims that can be made about it and what information must appear on food labels.

The primary objective of food regulation is the protection of public health and safety. This places public health at the heart of food regulation. Food regulation provides a set of rules and standards to which food businesses – farmers, producers, manufacturers and retailers – must comply. However, CHOICE believes that a number of food regulatory decisions have tended to favour food industry demands for innovation and marketing opportunities and not adequately considered the public health consequences. One example is the permission to add a range of vitamins and mineral to formulated beverages result in them being promoted as healthy choices despite the fact they may be sweetened with sugar.

The full opportunity for food labelling – and food regulation more broadly – to protect public health has not been realised. Food manufacturers will use labels to convey health messages so regulation is needed to ensure that marketing claims don't undermine healthy eating messages by misleading consumers. Food labels also provide an opportunity to promote healthy choices e.g. through front of pack nutrition labelling.

#### The public health impact of poor food choices

CHOICE welcomes the Commonwealth Government's commitment to preventing chronic disease such as overweight and obesity, demonstrated through the establishment of the National Preventative Health Taskforce. Overweight and obesity have serious health consequences and 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 general<sup>1</sup>. The total cost of obesity in Australia in 2008 was as high as \$58 billion per year<sup>2</sup>.

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.

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<sup>1</sup> 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.

<sup>2</sup> Access Economics. (2008), *The growing cost of obesity in 2008: three years on*. Report by Access Economics Pty Limited to Diabetes Australia.



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. This principle should be extended to the provision of food labels that support consumers to make healthy choices.

### **The role of food labelling in promoting healthy choices**

Rising rates of obesity and other chronic diseases mean there’s now greater expectation that food labelling will go further in promoting healthy choices. 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 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.

Food manufacturers use food labels to tell consumers selected information about the nutrition content or health benefits of their products. Marketing claims about the nutrition content and selected health benefits of individual products must be strictly regulated to prevent consumers being misled about the overall healthiness of a food, by prohibiting these claims on unhealthy foods.

CHOICE is calling for a UK-style traffic light labelling system to display nutrition information more prominently on the front of packs, allowing shoppers to identify healthy foods at a glance. Consumer research conducted by UK Food Standards Agency<sup>3</sup>, UK consumer organisation Which?<sup>4</sup>, as well as consumer research conducted by CHOICE in partnership with a number of public health groups such as the Cancer Council<sup>5</sup>, demonstrate that traffic light colours are vital in assisting consumers to use front of pack nutrition information to make healthy choices. Front of pack labelling is discussed in more detail later in this submission.

There also needs to be better alignment of other food regulatory decisions – not just decisions about food labelling – with public health goals, e.g. which foods can be fortified, and with which nutrients, what claims can be made. Fortification permissions, which allow manufacturers to add specific vitamins and minerals to a particular type of product (e.g.

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<sup>3</sup> Food Standards Agency. (2009), *Comprehension and use of UK nutrition signposting scheme*, Prepared for the Food Standards Agency by British Market Research Bureau Limited. <http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>. Accessed 13/5/2010.

<sup>4</sup> Which? (2006), *Campaign Report: Healthy Signs*, Consumers Association UK.

<sup>5</sup> 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



formulated beverages) should also support healthy eating messages rather than allowing unhealthy foods to be promoted as a source of vitamins and minerals.

### Overarching food labelling policy

As outlined in CHOICE's previous submission, an important way of improving the extent to which food labelling supports broader public health priorities is to develop an overarching food labelling policy that identifies the protection of public health as a driver for food labelling laws.

An overarching food labelling policy should be based on the three primary objectives of food regulation outlined in Section 18 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). These are:

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

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 Food Standards Australia New Zealand (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 also provide other labelling information that consumers need to make informed choices, and prevents misleading labelling

**Recommendation 1:** An overarching food labelling policy should be developed to outline the role of food labelling in supporting public health initiatives and providing consumers with information about what's in their foods, how healthy it is, and how and where it has produced.

### Defining public health

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, The Australian New Zealand Food Standards Code (the Food Standards Code) and the subsequent Food Acts would help to ensure that ‘public health and safety’ addresses more than just food safety and food-borne illness.

CHOICE believes that definition of ‘public health’ used by the Australian Institute of Health and Welfare (AIHW) is most appropriate. The AIHW defines public health as:

.....the organised response by society to protect and promote health, and to prevent illness, injury and disability. The starting point for identifying public health issues, problems and priorities, and for designing and implementing interventions, is the population as a whole, or population subgroups.”

Public health is distinguished from other roles of the health system by its focus on the health and wellbeing of populations rather than individuals. Public health programs are usually aimed at addressing the factors that determine health and the causes of illness, rather than their consequences, with the aim of protecting or promoting health, or preventing illness.<sup>6</sup>

**Recommendation 2:** The terms ‘public health’ and ‘public health and safety’ should be defined in the FSANZ Act, the Food Standards Code and relevant Food Acts in a way that clearly articulates the role of food regulation (and food labelling laws) in protecting and promoting the health of the Australian population in the long-term e.g. by promoting healthy food choices. The definition of public health used by the Australian Institute of Health and Welfare should be adopted.

**Q2. What is adequate information and to what extent does such information need to be physically present on the label or provided through other means (e.g. education or website)?**

Different food labelling information is important to different consumers and different levels of detail will be considered adequate by different consumers. CHOICE recognises that not every single detail that an individual consumer might like to know about a product – its ingredients, its origin and the how it had been produced – can reasonably appear on food labels. CHOICE understands that the some funding has been made available to the Food Labelling Review Panel to undertake research to inform its deliberations. We believe that this should be directed to consumer research that will gather information about Australian consumers’ priorities for labelling information, how widely different labelling information is used and how it is understood and interpreted.

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<sup>6</sup> Australian Institute of Health and Welfare. (2008), <http://www.aihw.gov.au/publications/hwe/pheia06-07/pheia06-07.pdf>, <http://www.aihw.gov.au/publications/hwe/pheia06-07/pheia06-07.pdf>. Accessed 14/05/10.



**Recommendation 3:** The Panel should undertake consumer research to identify Australian consumers' priorities for labelling information, how widely different elements are used and how they are interpreted.

Developments in communications technology mean that websites and mobile phone applications will provide new opportunities for delivering consumer information in a way that was never available when previous food labelling laws were developed.

This may provide opportunities in the future and CHOICE looks forward to seeing how the full potential of these technologies will be realised by food businesses. Australian consumers appear to be early adopters of mobile technology. Recent figures suggest that nearly half of consumers who have a mobile phone have internet-capable phones but only a third use them regularly to access the internet<sup>7</sup>. Home internet access is higher with around 72% of Australia households having access to the internet<sup>8</sup>. However consumers shouldn't have to have access to the internet or a smart phone to find out vital information about the foods they eat – these technologies can provide additional detail but should not be a substitute for food labels.

It is important that consumers have access to food labelling information at the point of sale. Any web-based developments should be accompanied by the provision of computers in-store – at least in the early phases – so that all consumers will have access to information when they're making food choices.

As the consultation paper points out, often the label is the only communication vehicle that consumers have to make informed choices about their foods. It is unrealistic to expect consumers to conduct a detailed internet search before they go grocery shopping.

Many food labelling elements are mandatory because they provide vital information to enable consumers to make healthy and informed choices e.g. ingredients lists, nutrition information panels, country of origin declarations, net weight. Other information is mandatory for food safety reasons e.g. best before or use by dates, storage suggestions, and allergen declarations. Contact details and bar codes provide information that is vital if there is a food recall or contamination incident.

CHOICE believes that current mandatory information should remain on food labels, unless there is evidence that Australian consumers do not use or value particular labelling elements on food labels at the point of sale or that the information could be more effectively provided in another way that was easily accessible to all consumers.

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<sup>7</sup> Timson, L. (29 April 2010), Australians take to mobile internet, *Sydney Morning Herald*. <http://www.smh.com.au/digital-life/mobiles/australians-take-to-mobile-internet-20100429-tszn.html>, accessed 06/05/10.

<sup>8</sup> Australian Bureau of Statistics. (2009), 8146.0 - Household Use of Information Technology, Australia, 2008-09. <http://abs.gov.au/ausstats/abs@.nsf/mf/8146.0/>, (accessed 06/05/10).



**Recommendation 4:** Current mandatory labelling information requirements should not be removed without clear evidence about consumers' use and understanding of these elements.

**Recommendation 5:** Governments, food industry, retailers, communications experts and consumer groups should work together to determine how information technology can be used in the future to provide consumer information about food at the point of sale.

### Q3. How can accurate and consistent labelling be ensured?

Mandatory food labelling requirements should be set out in the Food Standards Code in such a way that it is clear to manufacturers what information they are required to present and how it should be presented, as well as how these requirements are to be interpreted. CHOICE understands that a separate process is considering how interpretive advice on food regulation can be centralised, for example through FSANZ<sup>9</sup>. Consistent interpretation and centralised advice will considerably improve the accuracy and consistency of labelling.

A centralised Commonwealth enforcement agency (as discussed in Section 5 of this submission) would also improve accuracy and consistency. The Australian Competition and Consumer Commission (ACCC) has jurisdiction to take action where it feels food labels breach misleading and deceptive conduct provisions of the *Trade Practices Act 1974*. However, through the Food Standards Code and the state and territory Food Acts, state and territory food and health authorities also have the power to take action against false and misleading food labelling.

This aspect of food regulation is not readily enforced by state food enforcement agencies, partly due to limited capacity and resources. Yet these food and health agencies have the expertise to determine when a product is falsely described under the Food Standards Code. CHOICE also understands that there are inconsistencies in the penalties for non-compliance depending on whether misleading and deceptive conduct is being enforced under the state Food Acts or the Trade Practices Act. This may also be a reason why the ACCC is more likely to take action on false and misleading food labelling.

**Recommendation 6:** Accuracy and consistency of labelling could be improved by transferring enforcement responsibility to a single national agency. In order to perform this enforcement effectively the agency would need to have:

- strong legislation establishing enforcement powers;

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<sup>9</sup> Food Standards Australia New Zealand. (2010), *Food Regulation Ministerial Council Joint Communique 7 May 2010*, <http://www.foodstandards.gov.au/scienceandeducation/newsroom/mediareleases/mediareleases2010/7may2010jointcommuni4792.cfm>. Accessed 10/05/10.



- a full suite of enforcement tools, including information gathering powers and a range of penalties suitable for different infringements;
- expertise in food labelling, food regulation and general consumer protection law; and
- sufficient funding and capacity to undertake enforcement across a range of labelling issues, as well as proactive compliance monitoring.

Better regulation of health claims on food labels and a new mandatory standard on front of pack nutrition labelling would improve accuracy and consistency of health information for consumers. These matters are discussed in more detail in response to Questions 10 and 26.

**Q4. What principles should guide decisions about government intervention on food labelling?**

The primary objectives for food regulation set out in the FSANZ Act adequately capture what should be the guiding principles of food regulation and food labelling specifically. These objectives are:

- a) the protection of public health and safety;
- b) the provision of adequate information relating to food to enable consumers to make informed choices; and
- c) the prevention of misleading and deceptive conduct.

As outlined above, these objectives should be supported by 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.

Additional principles to guide government intervention on food labelling include:

- Decisions should be based on independent consumer research that is relevant to the Australian context.
- Food labelling laws should support consumers to make healthy and sustainable choices about the food they eat.
- Food labelling should be quick and easy for consumers to use and understand at the point of sale by the maximum number of consumers, particularly those groups with a greater burden of diet-related disease.
- New labelling initiatives should be supported by public education campaigns to assist consumers to use food labels effectively.
- Food labelling should be monitored to promote compliance and evaluated to ensure that it is used and interpreted appropriately.



**Recommendation 7:** The primary objectives of food regulation as outlined in the Section 18 of the FSANZ Act should guide government intervention in food labelling.

**Recommendation 8:** Additional principles to guide government intervention include the need for interventions to:

- support health promotion initiative;
- assist a range of consumers to make healthy and informed choices at a glance;
- be based on evidence relevant to Australian consumer;
- be accompanied by public education campaigns; and
- be monitored and evaluated appropriately.

**Q5. What criteria should determine the appropriate tools for intervention?**

There are a number of criteria that should determine appropriate tools for government intervention. These will obviously differ among different stakeholder groups. In order to protect the interests of consumers, CHOICE recommends the following criteria should be considered when determining appropriate tools for intervention.

- consumer detriment of non-compliance, including safety risks, long-term health implications and financial loss;
- consumer confidence in the food regulatory system and the food supply;
- consumer expectation of government oversight and support for self-regulatory and co-regulatory approaches;
- consumer demand for and use of specific elements of labelling information; and
- the track record of industry compliance or non-compliance.

**Recommendation 9:** When determining appropriate tools for intervention governments should consider consumer detriment, consumer confidence in the food supply, expectations of government oversight, consumer demand for specific labelling elements and industry track record of compliance.



### 3. Key roles of food labelling

#### Q6. Is this a satisfactory spectrum for labelling requirements?

This question relates to the statement in the consultation paper that:

All packaged foods (with a few exceptions) require labelling, though requirements are minimal for some simple packaged foods. The exceptions include: packages that are very small; food made and packaged on the premises where it is sold; food packaged in the presence of the customer or packaged and delivered at the customer's request. Some unpackaged food – certain fruits, vegetables, seafood and pork products – require country of origin labelling; food which has been genetically modified or irradiated must be labelled as such or have a label display; and certain mandatory declarations, advisory and warning statements that apply to unpackaged foods must be provided on, or in connection with, the display of the food.

This description illustrates the diverse nature of food labelling and the need to consider some elements and foods on a case-by-case basis. Improvements to existing food labelling requirements are discussed in more detail in following sections of this submission. CHOICE supports the extension of nutrition information requirements to Quick Service Restaurants, and labelling requirements more broadly applying to foods sold to food service establishments. This would support businesses to provide consumer information about nutrition content and food allergens, for example.

An area that hasn't been considered to date is the provision on labelling information when food is sold online directly to consumers, or for food manufacturing and food service. Information like ingredients lists and allergens would assist consumers to make informed choices at the point of sale when shopping online. Some manufacturers make this information available on their company websites but not all manufacturers do. There could be a requirement for manufacturers to provide mandatory labelling information on company websites when their foods are sold online.

**Recommendation 10:** The Panel should consider mandatory labelling provisions to Quick Service Restaurants, foods sold to food service establishments and foods that are sold online.

#### 3.1. Health Safety

#### Q7. In what ways could these misunderstandings and disagreements (around health safety labelling such as use-by dates, identification of allergens, directions for use and storage) be overcome?

Date marking provisions should be reviewed as they do not provide adequate guidance for food businesses about whether a best before date (indicating diminished quality) or a use-by date (indicating a potential safety risk) is most appropriate, and how the date should be determined. This is contributing to consumer confusion over the difference between the two types of date marking and could lead to unnecessary food waste and avoidable prosecution of



food businesses who sell foods past their use-by date when a best before date would have been more appropriate.

There are a number of improvements to date marking provisions that would improve consumer information. These include: a 'best before' or 'packed on' date on canned foods with a shelf life of longer than two years; a 'laid-on' date for eggs; and a 'packed on' or 'picked on' date for olive oil. Date marking should be applicable to the relevant food e.g. a 'picked on' date would be a more helpful indicator of the quality of olive oil than a best before date.

**Recommendation 11:** Standard 1.2.5 of the Food Standards Code (Date Marking) should be reviewed to improve date marking information for consumers and to provide better guidance for food businesses. Specific areas for improvement include canned foods, eggs and olive oil.

CHOICE is aware that groups such as the Coeliac Society of Australia and Anaphylaxis Australia have raised concerns about the extent to which allergen labelling provides information that allows consumers with allergies and intolerances to confidently identify foods that are safe to eat.

Specific issues include:

- The use of meaningless 'may contain' statements and the support for the VITAL system to be used more extensively on food labels to provide greater consumer confidence in allergen statement.
- Exemptions in Standards 1.2.1 and 1.2.3 of the Food Standards Code deprive consumers of vital allergen information.
- Inconsistencies between requirements of Standard 1.2.3 of the Food Standards Code and Trade Practices Act provisions that relate to absolute claims such as 'gluten free'.
- Poor compliance of the food service industry with the provision of information about the presence of allergens in foods.

CHOICE supports the submissions of the Coeliac Society of Australia and Anaphylaxis Australia as both organisations represent the interests of consumers with food allergies and intolerances.

**Recommendation 12:** FSANZ should promptly expedite the review of Standard 1.2.3 *Mandatory warning and advisory statements and declarations* to improve allergen labelling for consumers and address inconsistencies between food regulation and the Trade Practices Act.



## 3.2. Health Promotion

### Q8. In what ways can food labelling support health promotion initiatives?

There are a number of ways that food labelling can be used to support health promotion initiatives. First and foremost an overarching food labelling policy is needed to reinforce the role of food labelling in supporting health promotion initiative. Second, the term ‘public health’ should be better defined in the FSANZ Act, Food Standards Code and the state food acts to explicitly articulate that the first objective of food regulation – the protection of public health and safety – encompasses long-term health implications of food choices and the promotion of good health through healthy food choices.

There are also a number of specific ways that food labelling laws could be improved to support health promotion initiatives.

- **nutrition information panels** should remain mandatory and should list trans fat content of foods;
- **ingredients lists** telling consumers what’s in their food and the levels of key ingredients, including types of fats and oils, specific additives;
- **front of pack nutrition labelling** regulation should be developed to establish a mandatory, consistent approach that helps consumers to identify healthy choices at a glance;
- **nutrition and health claims** regulation should prevent consumers being misled about the health and nutrition benefits of unhealthy foods;
- **nutrient profiling** developed by FSANZ for the purpose of regulating health claims should be used to determine which foods can be promoted as healthy choices;
- **trans fats** should be identified in nutrition information panels and ingredients lists;
- **serve sizes** used in nutrition information panels and % DI labelling should be standardised to prevent them being manipulated by food manufacturers to convey a more positive message about nutrition content of their products.
- **alcohol products** should carry nutrition information panels and ingredients lists, and may warrant additional labelling requirements such as mandatory warning statements, and prohibition on nutrition and health claims on alcohol products;
- **legibility** criteria should be reviewed to provide more specific guidance on how products should be labelled to maximise legibility and prominence, and assist consumers to identify healthy choices.



- **food additive labelling** requirements should be improved to clearly identify additives and functional ingredients on food labels either by their function or name, and with their additive number; and close labelling loopholes that exempts manufacturers from listing additives in ingredients that make up less than 5% of the final product.

A number of these proposals are outlined in more detail in subsequent sections of this submission. The following recommendation covers those elements that aren't addressed in subsequent recommendations.

**Recommendation 13:** Food labelling laws should mandate the declaration of trans fat content in the nutrition information panel.

**Recommendation 14:** Serving sizes should be standardised to prevent manufacturers manipulating serve sizes, and to provide serve size information that is more relevant to how the food is consumed.

**Q9. In what way can the disclosure of ingredients be improved?**

**Recommendation 15:** CHOICE believes that ingredients lists could be improved to provide information that better assists consumers to make healthy and informed choices by:

- highlighting sources of trans fats and hydrogenated oils;
- specifying the source of any vegetable oil, particularly e.g. palm oil;
- identifying additives by their functional name or chemical name and additive number;
- removing the labelling loophole that exempts manufacturers from listing additives in ingredients that make up less than 5% of the final product;
- declaring when products such as juices, stocks and sauces have been reconstituted;
- improving the way complex ingredients lists are structured, including the calculation of percentages of characterising ingredients; and
- amending the definition of characterising ingredients so that manufacturers are required to declare the percentage of all key ingredients in foods.



**Q10. To what extent should health claims that can be objectively supported by evidence be permitted?**

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 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 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.



CHOICE also supports the 2009 proposal by FSANZ that general level health claims should be preapproved by FSANZ before they can be used on food labels. This would provide greater assurance that only those food and health relationships that are substantiated by peer-reviewed research can be used, preventing consumers being misled by dubious or unsubstantiated claims.

**Recommendation 16:** The Panel should expedite the introduction of a nutrition and health claims standards that:

- requires premarket substantiation and approval of general level and high level health claims;
- uses FSANZ nutrient profiling system to prohibit nutrition and health claims on unhealthy foods; and
- prevents manufacturers misleading consumers about the healthiness of individual products by making selected nutrition and health claims.

**Q11. What are the practical implications and consequences of aligning the regulations relating to health claims on food and complementary medicine products?**

CHOICE recognises that the current system of regulating complementary medicine and the proposed system for regulating health claims present inconsistencies. However, each system has its strengths and weaknesses that afford different degrees of consumer protection.

A sponsor of a complementary medicine does not have to prove efficacy nor provide evidence for therapeutic claims before their products enter the market. Sponsors would only have to provide evidence to support their claims if it is requested by the Therapeutic Goods Administration (TGA) as part of its enforcement activities. However, only a small proportion of products are monitored as part of routine post-market surveillance so the claims made about the majority of complementary medicines may never be assessed. Sponsors found to be making false or unsubstantiated claims face significant penalties which may be sufficient to deter most sponsors from making unsubstantiated claims.

Under the proposed health claims regulation a limited number of general level and high level health claims that link individual nutrients with specific health benefits would be pre-approved by FSANZ. The evidence for the nutrient-benefit relationship would have already been assessed and any product that contains sufficient quantities of a particular nutrient (a minimum level would be set out in the Food Standards Code) would be eligible to carry that claim.

Under current arrangements enforcement of this standard would be the responsibility of state and territory food or health authorities in the state where the manufacturer or importer is located. There is no requirement to monitor compliance and authorities may only investigate compliance if a product is the subject of a complaint.



Under this scheme, enforcement would involve determining whether a particular claim was permitted by FSANZ and whether a product claiming a particular benefit contained sufficient amounts of the relevant nutrient. The enforcement agency would not need to assess the evidence to substantiate the claim. However, compared with complementary medicines, the penalties for non-compliance under the Food Acts are less substantial and may not act as a sufficient deterrent for non-compliance.

Aligning health claims and complementary medicine regulation could prevent manufacturers cherry picking the least onerous regulatory scheme and minimise the risk that products fall in the regulatory grey area between food and therapeutic regulations. While CHOICE believes that the regulatory system for complementary medicines requires improvement, attempting to align the regulations for food and complementary medicines could result in weak standards being applied to complementary medicines.

Food and complementary medicines may warrant different regulatory regimes because people consume nutrients in a range of foods throughout the day where as complementary medicines can be a consumer's only source of particular substances. Foods usually provide smaller does of nutrients and non-nutritive substances compared with complementary medicines. CHOICE sees merit in aligning the assessment of evidence behind claims about individual nutrients and non-nutritive substances such as herbal supplements.

**Recommendation 17:** A number of principles should apply to health claims on foods and complementary medicines. Both schemes should:

- involve pre-market assessment and approval of claims;
- require proof for efficacy for the food, nutrient or substance that is the subject of the claim;
- rely on published independent, peer-reviewed research to substantiate claims; and
- involve sanctions and penalties that are sufficient to deter manufacturers and sponsors from making misleading and unsubstantiated claims.

**Q12. Should specific health warnings (e.g. high level of sodium or saturated fat per serve) and related health consequences be required.**

CHOICE is not convinced that health warnings are appropriate on food labels or be of benefit to consumers. Warnings could create consumer confusion if they are used on products that make marketing claims about nutrition or health benefit, or that they may create undue alarm.



CHOICE believes it would be more effective to convey information about the levels of nutrients of public health concern – total fat, saturated fat, sugars and sodium – using traffic lights. While a red light could be construed as a warning not to consume too much of a product it would provide consumers with quick, visual information about whether products contain high, moderate or low levels of these nutrients.

We also believe that if health claims are adequately regulated, via the introduction of the propose health claims regulation and nutrient profiling system, and extending its application to nutrient content claims, there would be no need for health warnings relating to unhealthiness or nutrition content.

We recognise that warning labels are effective on products such as tobacco that have no inherit health benefit and are ultimately harmful. We support the use of warning statements on alcohol products because of the relationship between alcohol consumption and some cancers, and the harm that alcohol consumption during pregnancy can cause to the developing foetus. CHOICE also supports the mandatory declaration of allergens and warning statements to alert consumers to the presence of particular allergens that can be hazardous for consumers with certain food allergies. Improvements to allergen information have been addressed in response to Question 7.

**Recommendation 18:** Better health claims regulation and mandatory front of pack nutrition labelling involving traffic light colours is preferable to health warnings about nutrient content.

**Recommendation 19:** Health warnings could be used on alcohol products to prevent risk of harm e.g. though excessive alcohol consumption, alcohol consumption during pregnancy.

**Recommendation 20:** Warning declarations should continue to be used to identify the presence of allergens in foods.

### 3.3. Consumer information

**Q13. To what extent should labelling requirements of the Food Standards Code address additional consumer-related concerns, with no immediate public health implications?**

CHOICE recognises that separating food labelling requirements into these three categories assists in the structure of the consultation paper but we believe that consumers don't make such clear distinctions in reality. Some information that is perceived by regulators to be for additional consumer information only, is used by consumers to manage their health and safety risks.

For example, country of origin labelling was introduced to allow consumers to make informed choices about the origin of their food, not for health and safety reasons. Yet one reason why consumers want to identify the origin of food is because of concerns about safety standards



and chemical use in some other countries. This information also becomes valuable in the event of a food safety recall that is associated with products from a particular country.

Similarly, consumers are increasingly interested in purchasing organic foods due to concerns about the potential health effect of exposure to agricultural chemicals such as herbicides and pesticides. The labelling of organic food would be seen by many consumers as providing information that helps them to make safer and healthier choices.

Like country of origin labelling, labelling of foods derived from genetic modification was introduced to enable consumers to make informed choices. FSANZ requires any genetically modified (GM) sold in Australia to be safe. Yet with much still unknown about safety of long term consumption of GM foods, many consumers would rely on GM labelling to avoid any potential risks associated with consumption of GM foods.

This principle should apply to all uses of emerging technology in the food supply, including nanotechnology and food irradiation. There should be an overarching policy to label all foods derived using emerging technologies. Consumers have a right to know how their food is produced and whether any emerging technologies are used. This would give consumers the capacity to make informed decisions about whether they consumer particular products and support these technologies, while evidence of their long-term safety is emerging.

We would also like to point out that the use of the word ‘immediate’ in this question illustrates one of CHOICE’s concerns that the term ‘public health and safety’ is selectively interpreted as pertaining to immediate safety risks only, when the concept of public health is much broader than this and many public health impacts occur over the long term e.g. chronic diseases that a in part a result of poor food choices over an extended period.

With this in mind, CHOICE believes that the Section 18 objectives of the FSANZ Act – the protection of public health and safety; the provision of adequate information relating to food to enable consumers to make informed choices; and the prevention of misleading and deceptive conduct – explicitly give food regulators the responsibility and authority to regulate aspects of food labelling that may not directly relate to immediate food safety risks or broader public health concerns.

**Recommendation 21:** The primary objectives of food regulation include ‘the provision of adequate information relating to food to enable consumers to make informed choices’ and ‘the prevention of misleading and deceptive conduct’. These objectives give FSANZ a clear mandate to regulate labelling for purposes other than public health and safety where information is needed to make informed choices about food.

**Q14. What criteria should be used to determine the inclusion of specific types of information?**

A number of criteria should be used to determine the inclusion of specific types of information. These include the criteria outlined above in response to Question 5:



- consumer detriment of non-compliance or misleading claims, including safety risks, long-term health impacts and financial;
- consumer confidence in the food regulatory system and the food supply;
- consumer expectation of government oversight and support for self-regulatory and co-regulatory approaches;
- consumer demand for and use of specific elements of labelling information; and
- the track record of industry in providing truthful and accurate information and complying with labelling regulation.

CHOICE appreciates that the Panel intends to take an evidence based approach to its deliberations and recommendations. It will therefore be difficult for the Panel to determine which types of information should be present without determining demand and support for various labelling elements among Australian consumers.

CHOICE is not aware that there has been any recent research into the food labelling expectations of Australian consumers. While individual research projects may look at consumers' understanding and use of specific labelling elements in isolation, there has been no recent research that determines what consumers' food labelling priorities are, what information they currently rely on, what information needs to be improved and what new information should be provided on food labels. CHOICE is not aware of any research that asks Australian consumers to prioritise food labelling elements in order of importance.

CHOICE posed these questions to CHOICE magazine subscribers and CHOICE Online users in an unprompted open-ended internet questionnaire. Nutrition information was most frequently mentioned as being most important to respondents. However, country of origin information was second, with almost half of the 118 respondents stating that country of origin information was most important to them. Third was ingredient information, followed by GM labelling. Country of origin information was mentioned most frequently as a labelling element needing improvement, followed by readability, then GM labelling. GM labelling, country of origin labelling and traffic light labelling were most frequently mentioned as new information that respondents would like to see on food labels.

Since the release of this consultation paper, the panel has advised stakeholders that it has some capacity to conduct research to inform its deliberations, however funding is limited and the review timeframe places considerable constraints on the research they can commission. CHOICE believes that these resources would be best devoted to research that will fill current gaps in evidence about Australian consumers' food labelling priorities and understanding of current labelling elements and how these can be improved.

In the absence of detailed consumer research the Panel will have to rely on consumer submissions as evidence that consumers value particular labelling elements. The Panel should not underestimate the role that 'consumer information' food labelling plays in enhancing



consumer confidence in the food supply and their personal autonomy to make informed choices about the food they eat.

**Recommendation 22:** When determining the inclusion of specific types of consumer information governments should consider consumer detriment, consumer confidence in the food supply, expectations of government oversight, consumer demand for specific labelling elements and industry track record of providing truthful and accurate information.

**Q15. What criteria should determine which, if any, foods are required to have country 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 (‘Made in’ and ‘Product of’) 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 additional country of origin labelling provisions for some fresh, unpackaged produce. There are also endorsement campaigns and logos such ‘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 including ingredients, ownership, production and manufacture. CHOICE supports further work to improve the clarity of country of origin information on food to help consumers better understand where their food is coming from.

As outlined above, country of origin labelling was introduced to allow consumers to make informed choices about the origin of their food, not for health and safety reasons. Yet many consumers make judgements about the safety food based on their beliefs about the hygiene standards and use of chemicals in a product’s country of origin. This information also becomes valuable in the event of a food recall that is associated with products from a particular country.

We believe that the origin of food is more important to consumers than say the origin of textiles or whitegoods. This is illustrated by the mandatory requirements for country of origin labelling on food products but not general consumer goods.

Therefore, the Trade Practices Act provisions are not sufficient to meet consumer expectation for country of origin information for food. Firstly, they are not mandatory; they simply set out



requirements for any manufacturer who chooses to make a country of origin statement. Second, the ‘Made in’ provisions do not provide consumers with information about the origin of key ingredients. CHOICE supports the retention of mandatory country of origin provisions in the Food Standards Code. A decision to remove these mandatory food labelling provisions would be contrary to consumer expectations and undermine confidence in the food supply.

Following are some recent examples highlight misleading or potentially misleading country of origin representations. In February 2010, the ACCC took action against the continued use of the claim ‘Australian Owned’ on *Golden Circle* products more than a year after it had been sold to foreign-owned company Heinz<sup>10</sup>.

Recent changes in import restrictions of beef products from countries with a history of bovine spongiform encephalopathy (BSE) have highlighted community concern about the origin of beef products. Current labelling laws wouldn’t necessarily tell consumers if a product contained beef imported from a country with a history of BSE. This has led to calls for country of origin labelling for beef products similar to pork. FSANZ is now preparing a proposal to vary Standard 1.2.11 to address inconsistencies in country of origin labelling requirements of packaged and unpackaged meat<sup>11</sup>.

TV advertisements for *Extra Juicy* fruit juice, promote the juice as “100% Australia owned” and encourage viewers to ‘Go on, buy Australian’. While the juice manufacturer may be Australian owned, mandatory country of origin statements – ‘Made in Australia from imported and local ingredients’ – on the label of all fruit juices sold under this brand suggest that they are made predominantly from imported juice<sup>12</sup>.

**Recommendation 23:** All packaged foods should be required to carry country of origin labelling.

**Recommendation 24:** Standard 1.2.11 of the Food Standards Code should be amended to:

- prohibit unqualified ‘Made in’ claims and require manufacturers to disclose the origin of each significant or characterising ingredients, or highlight that these ingredients have been imported. E.g. ‘Made in Australia from Canadian pork’.
- require all products containing meat (beef, lamb, pork etc), poultry, seafood, fruit and vegetable to identify the origin of these ingredients.

<sup>10</sup> Australian Competition and Consumer Commission. (17 March 2010), *Major charity donation follows ACCC concerns about Golden Circle ownership claims*. <http://www.accc.gov.au/content/index.phtml/itemId/919479/fromItemId/927069>. Accessed 14/05/10.

<sup>11</sup> Food Standards Australia New Zealand. (2010), *Administrative Assessment Report: Proposal 1011 Country of Origin Labelling – Unpackaged Meat Products*. [http://www.foodstandards.gov.au/\\_srcfiles/P1011%20CoOL%20Meat%20AAR%20FINAL.pdf](http://www.foodstandards.gov.au/_srcfiles/P1011%20CoOL%20Meat%20AAR%20FINAL.pdf). Accessed 13/05/10.

<sup>12</sup> P&N Beverages website, <http://www.pnbeverages.com.au/>. Accessed 01/04/10.



- require all fresh produce – meat, poultry, seafood, fruit, vegetables and nuts – to identify country of origin.

**Q16. How can confusion over country of origin terminology in relation to food be resolved?**

Consumer education is needed to highlight the difference between the ‘Made in’ and ‘Product of’ provisions and other country of origin provisions that are permitted under the Food Standards Code. The Commonwealth Government has previously worked with the Australian food industry to promote a new voluntary ‘Australian Grown’ logo and associated campaign to promote products that contain Australian produce.

Given the benefits to Australian producers and food businesses in promoting better understanding of country of origin labelling, CHOICE suggests that the government and food industry work together on a similar campaign, this time focussing on educating consumers about the different types of country of origin claims and what they mean.

CHOICE is also aware that the Australian Made/Australia Grown campaign allows the use of a green and gold kangaroo logo to identify foods made, produced or grown in Australia. CHOICE appreciates that logos can be used to quickly communicate with consumers, yet we are concerned that using the same logo for the different levels of claims could mislead or confuse consumers who do not pay sufficient attention to the written claims that sits under the logo.

Given the previous government-industry partnership behind the “Australian Grown” campaign, CHOICE suggests that industry and government again work together to review the logos associated with this campaign to highlighting the difference between the three tiers of claims, particularly as they relate to food products.

Improving the level of detail provided in country of origin declarations as outlined in response to Question 15 would also help to overcome confusion around country of origin terminology.

**Recommendation 25:** Country of origin labelling requirements for food should be reviewed to provide consumers with clearer information on the origin of foods and key ingredients.

**Recommendation 26:** Government and industry should review the current Australian Made/Australia Grown logo scheme to improve consumer understanding of the different tiers of country of origin claims, particularly with respect to food.

**Recommendation 27:** A public education campaign should promote better consumer understanding of country of origin claims.



**Q17. Is there a need to establish agreed definitions of terms such as ‘natural’, ‘lite’, ‘organic’, ‘free-range’, ‘virgin’ (as regards olive oil), ‘kosher’ or ‘halal’? If so, should these definitions be included or referenced in the Food Standards Code.**

### Quality descriptors

There is an array of quality descriptors used to create the impression that the product is minimally processed, is similar to something that a consumer would make themselves (i.e. without additives and other chemical ingredients), and/or is healthier than other similar products. These include terms such as ‘lite’, ‘pure’, ‘fresh’, ‘natural’, ‘real’, ‘homestyle’, ‘farmhouse’ and ‘original’.

A CHOICE investigation highlighted that many of these terms are meaningless and some products carrying these claims did not meet consumers’ expectations of minimal processing and natural ingredients<sup>13</sup>. The ACCC subsequently developed industry guidelines for manufacturers who chose to use these terms, to prevent consumers being misled<sup>14</sup>. However, CHOICE believes that many of these terms could be defined in the Food Standards Code. Terms that could be defined include: ‘natural’, ‘pure’, ‘fresh’, ‘natural’, ‘real’, and ‘lite’. These definitions could be based on those outlined in the ACCC guidelines.

The term ‘lite’ is currently defined in the Code of Practice on Nutrition Claims in Food Labels and in Advertisements; however this code is voluntary and has not been enforced by the food industry. A definition of ‘lite’ should be included in the new Nutrition and Health Claims standard, however the term ‘lite’ is not always used in relation to fat content but can also refer to a product’s flavour or texture e.g. light olive oil. The use of the term ‘lite’ to refer to non-nutritional aspects should be addressed in the Food Standards Code so that manufacturers are required to prominently highlight what the term ‘lite’ refers to e.g. ‘lightly flavoured’.

**Recommendation 28:** A range of quality descriptors e.g. ‘lite’, ‘natural’, ‘pure’, ‘fresh’, and ‘real’ should be defined in the Food Standards Code.

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<sup>13</sup> CHOICE. (2004), *Food for thought*, CHOICE Magazine, November 2004, p14-18.

<sup>14</sup> Australian Competition and Consumer Commission. (2006), *Food and beverage industry: Food descriptors guideline to the Trade Practices Act*, Commonwealth of Australia.



## Organic and free-range labelling

Numerous CHOICE magazine reports<sup>15 16 17</sup> have highlighted the need for better labelling standards for organic and free-range foods, so that consumers can be confident that they are getting what they pay for when they choose a product labelled as ‘organic’ or ‘free-range’. CHOICE advises consumers to look for one of a number of organic certification logos when they were buying organic food. These certification schemes are accredited by the Australian Quarantine and Inspection Service (AQIS) to certify organic foods for export. The certification schemes meet AQIS’s national standard for organic foods which applies to exported products only. There was no government standard that applied to organic foods sold within Australia.

By contrast, there is no national standard for free-range production that is endorsed by AQIS or any other government agency. There are a growing number of products claiming to be ‘free-range’ yet they are not certified to the extent that organic foods are. A number of industry schemes and standards exist e.g. Egg Corp Assured, Free Range Egg and Poultry Association of Australia (FREPAA), Free Range Egg and Poultry Australia (FREPA), RSPCA, Free Range Pork Association. Organic standards also meet free-range requirements.

CHOICE compared various voluntary free-range egg standards in a 2008 report on eggs and found considerable variation in standards relating to stocking density, access to outdoors and beak trimming<sup>18</sup>. A CHOICE Shonky Award was given to the Australian Egg Corporation Limited Egg Corp Assured scheme, because among other things, it’s stocking density standards for free-range birds (14 per square metre) were much higher in comparison to other standards (varied between 5 and 9 birds per square metre) and was not much of an improvement on stocking density for caged birds (18 per square metre).

## Development of a national organic standard

CHOICE believes that the second statutory objective of food regulation – the provision of adequate information relating to food to enable consumers to make informed choices – gives FSANZ authority to develop labelling standards that are for consumer information only. Yet when FSANZ was called on to develop a standard for foods labelled as ‘organic’, it claimed that it was not responsible for developing so-called ‘quality’ standards that didn’t relate to public health and safety.

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<sup>15</sup> CHOICE. (2008), *Free range eggs not all they’re cracked up to be*, CHOICE Online, <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Organic-and-free-range/Free-range-eggs/Page/Introduction.aspx>. Accessed 21/04/10.

<sup>16</sup> CHOICE, (2007), *Organic food buying guide*, CHOICE Online, <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Organic-and-free-range/Organic-food/Page/Introduction.aspx>. Accessed 21/04/10.

<sup>17</sup> CHOICE, (2009), *Organic meat in question*, CHOICE Online, <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Organic-and-free-range/Organic-meat-in-question/Page/Introduction.aspx>. Accessed 21/04/10.

<sup>18</sup> CHOICE. (2008), *Free range eggs not all they’re cracked up to be*, CHOICE Online, <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Organic-and-free-range/Free-range-eggs/Page/Introduction.aspx>. Accessed 21/04/10.



As a result, a Standards Australia working group was established to develop the Australian Standard on Organic and Biodynamic Products. The Standard was introduced in 2009. It is not mandatory but it provides the ACCC with the guidance it would need to take action against a business that was selling products that claimed to be organic yet weren't produced in accordance with organic principles or standards. In order to make the standard mandatory it would need to be called up in legislation or regulation (e.g. the FSANZ Act, the Food Standards Code or the Trade Practices Act) or be approved by Treasury as a mandatory standard.

### **Development of a free-range standard**

In the 2008 free-range eggs, article CHOICE called for a free-range standard to be developed. Free-range certification schemes are not as widespread or as stringent as organic schemes, possibly due to the fact that they are not overseen by AQIS. One could argue that on this basis there is a greater need for a free-range standard, than an organic standard.

Free range foods are usually more expensive than conventionally produced foods, but are cheaper than organic foods. This means they are a more affordable option for consumers who want to make a more ethical or humane choice but don't want to pay extra for a certified organic product. Without robust standards and certification schemes consumers are at risk of being misled by manufacturers who want to take advantage of the premium that a free-range product attracts. In the absence of a Food Standards Code definition of 'free range', CHOICE supports the development of an Australian Standard on Free-Range Products. This Australian Standard should then be referenced in the Food Standards Code or FSANZ Act.

CHOICE believes the new Australian Standard on Organic and Biodynamic Products should be referred to in the FSANZ Act or Food Standards Code so that any product that is labelled or promoted as 'organic' must meet the standard. We also believe that an Australian Standard should be developed for free-range products and that this should be referenced in the FSANZ Act or Food Standards Code so that any product labelled as 'free-range' would be required to meet the Australian Standard.

This would provide consumers with greater assurance that they were getting a genuine organic or free-range product and deter misleading use of these terms. It would also limit the enforcement burden for government agencies as it relies on accredited third party certification schemes to audit producers and manufacturers, rather than requiring government authorities to inspect farm to audit free-range or organic practices.

**Recommendation 29:** The Australian Standard on Organic and Biodynamic Products should become mandatory by referencing the Australian Standard in the Food Standards Code or FSANZ Act.



**Recommendation 30:** An Australian Standard on Free-Range Products should be developed by a range of industry, government and consumer stakeholders through the Standards Australia processes and made mandatory through a reference in the Food Standards Code or FSANZ Act.

## Palm oil

Another area of growing consumer concern is the use of palm oil in food manufacturing. The use of palm oil in food presents two issues:

1. Palm oil is high in saturated fat. Eating too much saturated fat increases the risk of heart disease. The Dietary Guidelines for Australian Adults<sup>19</sup> advises that saturated fats (including palm oil) be limited and replaced with unsaturated vegetable oils. The Heart Foundation advises that palm oil is too high in saturated fats to be recommended.<sup>20</sup>
2. There is now growing concern about the environmental and ecological impact of palm oil production for use in food but also as a biofuel. Demand for palm oil can result in deforestation in Malaysia and Indonesia<sup>21</sup> and loss of native habitat for animals such as orang-utans and Sumatran tigers<sup>22</sup>.

Consumer interest in palm oil is apparent given the support for campaigns such as the Taronga Zoo Palm Oil Petition, which has almost 2,000 signatories.<sup>23</sup> Food labelling could assist consumers to easily identify those products containing palm oil by highlighting its presence in the ingredients list. Third-party accreditation schemes with strict verification requirements and transparent processes could also be used to highlight products made from sustainably sourced palm oil.

CHOICE believes food manufacturers should seek alternatives to palm oil and that it needn't be used in many cases. In bakery goods for example, Unilever and Goodman Fielder both supply a range of industrial margarines that are free from trans fats and palm oil. Manufacturers always used margarine before palm oil became so plentiful and cheap.

However, where palm oil is used, it should be:

- sustainably sourced, and

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<sup>19</sup> National Health and Medical Research Council. (2003), *Food for Health: Dietary Guidelines for Australian Adults*. Commonwealth of Australia.

<sup>20</sup> Heart Foundation. (2009), *Q&A Dietary fats, dietary cholesterol and heart health*, <http://www.heartfoundation.org.au/sites/HealthyEating/SiteCollectionDocuments/DietaryFats%20QA.pdf>, accessed 12/4/10.

<sup>21</sup> Roundtable on Sustainable Palm Oil, *Factsheet: Palm Oil*, <http://www.rspo.org/files/pdf/Factsheet-RSPO-AboutPalmOil.pdf>. Accessed 12/4/2010.

<sup>22</sup> Centre for Science in the Public Interest. (2005), *Cruel Oil: How palm oil harms health, rainforest and wildlife*. <http://www.cspinet.org/palm/PalmOilReport.pdf>, accessed 12/4/2010.

<sup>23</sup> Taronga Conservation Society Australia. (2010), *Don't Palm Us Off?* Petition, <http://petition.taronga.org.au/palmoil>. Accessed 23/4/10)



- declared in the ingredients list.

This would help consumers to exercise their right to avoid foods that contain unhealthy and unsustainable palm oil.

**Recommendation 31:** Food manufacturers should replace palm oil with healthier and more sustainable fats and oils. Where palm oil is used it should be: a) sustainably sourced and b) declared on the ingredients list.

### Olive oil

CHOICE supports a definition of ‘extra virgin olive oil’ in the Food Standards Code. A CHOICE investigation on olive oils due for publication in June 2010 has found that many local and imported extra virgin olive oils tested failed International Olive Council standards for products labelled as ‘extra virgin’. In 2009 the ACCC found three products labelled as ‘extra virgin olive oil’ failed to meet the IOC standards<sup>24</sup>. This resulted in court enforceable undertakings that for the following three years the companies involved would provide evidence that their products met international standards.

**Recommendation 32:** The International Olive Council standards should be referenced in the Food Standards Code or FSANZ Act so that it becomes mandatory for all products labelled as ‘extra virgin’ olive oil to meet the IOC standards.

### Q18. What criteria should be used to determine the legitimacy of such information claims (animal welfare and environmental concerns) for the food label?

As consumers becoming increasingly interested in how their food is produced, it’s likely that we will see more and more products making claims about their environmental or ethical credentials. Such products may attract a premium which many consumers will be willing to pay because they want to support producers and manufacturers who supply sustainably produced food.

This could result in numerous conflicting and competing claims. Earlier in this submission we have outlined how some of these claims can be defined by referencing relevant Australian Standards in food regulation.

In many cases environmental or animal welfare claims are supported by endorsement or certification schemes. These schemes enhance consumer confidence by establishing detailed standards and stringent verification processes.

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<sup>24</sup> Australian Competition and Consumer Commission. (2 October 2009), *Extra virgin olive oil now true to be label*, <http://www.accc.gov.au/content/index.php?id/895541>. Accessed 07/05/10.



CHOICE believes that the industry should be encouraged to move to more ethical and sustainable practices. Claims and endorsement schemes, and the premium that more sustainable products attract, will provide an incentive for food businesses to improve practices. In turn, consumers need to be able to easily identify sustainable products and be confident that they can trust environmental and animal welfare claims.

CHOICE recently investigated a number of food endorsement schemes to determine whether they were schemes that consumers could trust<sup>25</sup>. The investigation looked at the schemes behind the top 10 most recognized and influential logos (determined by a CHOICE Online consumer poll) that helped consumers to identify healthy or sustainable foods.

The 10 schemes assessed were: Australia Certified Organic, National Association for Sustainable Agriculture Australia, Fairtrade, Rainforest Alliance Certified, RSPCA Approved Farming, Heart Foundation Tick, the Glycemic Index (GI) Symbol, Organic Growers of Australia, Dolphin Safe and Free Range Egg and Poultry Australia.

The schemes were assessed against the following six (6) criteria:

- stringency of verification processes;
- transparency of standards, funding and the organisation and individuals managing the scheme;
- how easily consumers could access information about the products endorsed, seek further information, provide feedback and participate in standards development processes;
- how conflicts of interest are dealt with;
- whether the program's standards are open to public consultation and broader stakeholder input; and
- how accessible the scheme is to manufacturers and producers regardless of size or profits.

Note: The individual standards behind each scheme could not be compared as part of the CHOICE investigation but robust standards must underpin any animal welfare or environmental labelling scheme.

CHOICE was pleased to discover that most of the schemes were well administered and were recommended as a scheme that consumers could rely on to make healthy and sustainable choices. Both the Australian Certified Organic scheme and the National Association for Sustainable Agriculture Australia scheme met all our assessment criteria. This is not

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<sup>25</sup> CHOICE. (2010), Food endorsement systems, *CHOICE Online*. <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Labeling-and-advertising/Sustainability/Food-endorsement-programs/page/Introduction.aspx>. Accessed 05/05/10.



surprising as both schemes are authorized by AQIS to certify organic products for the export market. This highlights the consumer benefit of having government oversight over endorsement schemes.

The investigation also highlighted the important role that well-established independent food endorsement schemes can play in providing consumer information. However, for consumers to be able to trust these schemes and logos they need to meet certain criteria relating verification, transparency, consumer-friendliness, stakeholder engagement, conflicts of interest and accessibility for businesses. Robust standards should also underpin these schemes. CHOICE believes that FSANZ and the ACCC should work towards establishing a set of criteria that should underpin any food endorsement scheme/logo and/or officially recognize schemes that meet these criteria so that a) there is some government oversight of food endorsement schemes and b) consumers can be confident about which schemes they can trust to make healthy and/or sustainable choices.

**Recommendation 33:** The following criteria should be used to determine the legitimacy of environmental and animal welfare claims.

- Claims are underpinned by robust standards that meet consumer expectation and are subject to broad stakeholder consultation.
- Regular government or independent third party verification is conducted.
- Third party certification and endorsement schemes are transparent with respect to funding, industry standards and member organisations.
- Consumers can easily access information about standards behind claims and endorsement schemes.
- Endorsement schemes behind environmental and animal welfare claims are free from conflicts of interest.
- Standards and schemes underpinning environmental and animal welfare claims accessible to all manufacturers and producers regardless of size or profits.

**Recommendation 34:** FSANZ and/or the ACCC should establish a set of criteria that should underpin food endorsement schemes and/or officially recognize the endorsement schemes that consumers can trust to make sustainable choices.

Food represents a considerable portion of a household's environmental footprint. The Australian Conservation Foundation estimates that food accounts for around 28% of a



household's greenhouse gas pollution, 46% of water use, and 49% of its eco footprint<sup>26</sup>. Yet there is debate about how to measure the environmental impact of food production, manufacture, transport, consumption and disposal, and convey this information to consumers in a meaningful way. Concepts such as food miles and carbon labelling have been developed. Carbon labelling is already being used on food labels in the UK and is soon to be introduced in Australia as a voluntary scheme administered by Planet Ark.

CHOICE supports food labelling that assists consumers to choose foods that will have minimal environmental impact. The 2009 ABARE report *Issues in food miles and carbon labelling* highlights some examples of research that found eco labels on food influenced consumer choices of dolphin safe tuna, Fairtrade and organic<sup>27</sup>. However, CHOICE is concerned that consumers may see a flood of competing environmental labels addressing different aspects of the food system or limited elements of a product's environmental impact. This creates the risk that the public debate around the potential limitations of individual schemes may undermine consumer confidence in using food labels to make sustainable choices.

Many factors influence consumers' food choices, personal and family preferences, price, taste, brand familiarity, availability, and quality and so on. Sustainability will not be the top priority for all consumers. However, we should not underestimate the role that food labelling can play in educating the broader community about the environmental impact of their food choices. Hence, environmental labelling is not only important for consumers who are already conscious of the impact of food production on the environment; it will be an important education tool for all consumers.

**Recommendation 35:** Governments should work with industry groups to ensure that new eco labelling schemes provide consumers with credible information to assist them to make sustainable choices.

**Q19. In what ways can information disclosure about the use of these technological developments (GM, irradiation and nanotechnology) be improved given the available states of scientific knowledge, manufacturing processes involved and detection levels?**

CHOICE recognises that technologies such as genetic modification, irradiation and nanotechnology have the potential to deliver consumer benefit in terms of food safety, improved nutrition, convenience, and reduced use of herbicides and pesticides. However, given the emerging nature of these technologies, the full impact on health and the environment is not known. Lack of evidence of harm does not indicate lack of harm, and a

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<sup>26</sup> Australian Conservation Foundation. (2007), *Consuming Australia: Main Findings*. [http://www.acfonline.org.au/uploads/res/res\\_atlas\\_main\\_findings.pdf](http://www.acfonline.org.au/uploads/res/res_atlas_main_findings.pdf)

<sup>27</sup> Hogan, L and Thorpe, S. (2009), *Issues in food miles and carbon labelling*, Australian Bureau of Agricultural and Resource Economics.



precautionary approach must be taken to reduce the impact of any as-yet unknown and unintended negative consequences, and provide information so that consumers can exercise their right to make informed choices.

Consumers are legitimately raising concerns about these technologies and have the right to know so they can make their own decisions based on full information, be it to purchase or avoid them – for safety, environmental, religious or ethical reasons. By giving consumers the information they need to make informed choices we will enhance consumer confidence in the food supply and their own autonomy to decide whether they consume products derived from genetic modification and/or nanotechnology.

### **Genetically modified 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.

A recent CHOICE report highlighted just how widely GM ingredients could be used without being labelled<sup>28</sup>. The table below highlights the range of products that are likely to contain genetically modified canola, corn, cotton and soy.

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<sup>28</sup> CHOICE. (2010), Genetically modified food risks, *CHOICE Online*. <http://www.choice.com.au/Reviews-and-Tests/Food-and-Health/Food-and-drink/Safety/GM-food/page/Introduction.aspx>. Accessed 11/05/10.



GENETICALLY MODIFIED FOODS		
GM crop	Appears on ingredients list as	Examples of foods in which it may be used
<b>Canola</b>	Vegetable oil, canola oil	Cooking oil, margarine-type spreads, mayonnaise, bread, cakes, biscuits, snacks (such as potato chips)
<b>Corn</b>	Glucose/glucose syrup/dextrose	Cakes, biscuits, muffins, muesli bars, breakfast cereals
	Fructose	Cakes, muesli bars
	Maltodextrin	Simmer sauces, cake mixes, snacks, breakfast cereals, peanut butter
	Modified starch/thickener	Cakes, biscuits, muffins, muesli bars, sauces, breakfast cereals
<b>Cotton</b>	Vegetable oil/cottonseed oil	Cooking oil, margarine-type spreads, mayonnaise, snacks (such as potato chips), simmer sauces
<b>Soya</b>	Soy oil/vegetable oil	Mayonnaise
	Soy protein/vegetable protein	Bread, cakes, biscuits, snack foods
	Soy lecithin/emulsifier (322)	Bread, cakes, biscuits, chocolate, margarine-type spreads, sauces

FSANZ claims it’s mandatory for GM foods to be identified on the label, “to assist consumers to purchase or avoid GM foods, depending on their own views and beliefs”. But rarely do consumers see claims such as “contains genetically modified ...” on a food label. This is because the labelling requirements under the Food Standards Code apply only to foods that contain artificially modified DNA or protein. Products such as canola oil that contain no DNA or protein don’t need to be labelled, even when they’re made entirely from GM canola. The same applies to products from animals fed GM feed such as canola meal. These do not require labelling on the grounds that GM protein or DNA cannot be detected in the end-products – meat, eggs or milk.

There’s no way that regulations with such big loopholes can enable consumers to make truly informed choices. 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.

A 2003 poll of CHOICE Online members found demonstrated widespread consumer support for better labelling of GM foods. A total of 94% of the 645 respondents agreed that there should be comprehensive labelling of foods derived from genetic modification (84% strongly



agree and 10% somewhat agree). When asked specifically whether they agreed or disagreed with labelling laws that only require a product such as canola oil to be labelled as genetically modified when the genetically modified material is present in the final product, 75% of respondents disagreed (see Attachment 1 for full results). Following CHOICE's recent report on GM foods more than 200 consumers emailed the food labelling review panel supporting CHOICE's call for more comprehensive labelling of GM foods.

**Recommendation 36:** GM labelling laws should be strengthened so that all products derived from genetic modification should be labelled, even when GM ingredients have been highly refined.

### Nanotechnology in food

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. Consumers have not been engaged in a debate about the future of nanotechnology in Australia and what applications of nanotechnology they support.

CHOICE recognises that like genetic modification, nanotechnology can deliver potential benefits for consumers. Like genetic modification, there is also 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. Australia's food labelling laws should require all foods containing nanoparticles either as an ingredient or as packaging to be labelled as being derived from nanotechnology or containing nanoparticles.

**Recommendation 37:** Food labelling laws should require labelling of all products derived from nanotechnology or packaged in materials that contain nanoparticles.

## 3.4. Alcohol

**Q20. Should alcohol products be regulated as a food? If so, should alcohol products have the same labelling requirements as other foods (i.e. nutrition panels and list of ingredients)? If not, how should alcohol products be regulated?**

Currently, alcoholic beverages are exempt from a number of labelling elements that are mandatory for other food products and non-alcoholic beverages. For example, alcohol products are not required to carry ingredients lists and labels are only required to carry a nutrition information panel if a nutrition content claim is made e.g. low carbohydrate beer.

Like fat, carbohydrates and protein, alcohol is a source of dietary kilojoules, contributing 27kJ per gram of alcohol. By comparison, 1g of protein provides 17kJ, 1g of carbohydrate provides



16kJ, 1g of fat provides 37kJ. Therefore alcohol consumption contributes to an individual's energy intake and may contribute to weight gain. Many alcoholic beverages also contain sugar which is an additional source of kilojoules. Given the contribution of alcohol to energy intake and rising rates of overweight and obesity in Australia, CHOICE believes that alcohol products should not be exempt from current mandatory labelling requirements for food.

**Recommendation 38:** Mandatory labelling requirements, particularly nutrition information panels and ingredient labelling, should apply to alcohol products.

The Commonwealth Government's National Preventive Health Taskforce identified alcohol as a preventive health priority because chronic diseases and injury caused by high-risk drinking patterns are a burden on Australia's health system and cost the Australian community an estimated \$15 billion annually<sup>29</sup>. For this reason, additional labelling requirements may be warranted for alcohol products to minimise alcohol related harm. CHOICE supports the prohibition of health and nutrition claims on alcohol products to prevent marketing that implies or attributes health or nutritional benefits to alcohol consumption. CHOICE also supports the use of health promotion messages or warning statements on alcohol products to highlight safe drinking guidelines and address the broad range of harms associated with alcohol consumption, such as binge drinking and alcohol consumption during pregnancy.

**Recommendation 39:** Additional labelling requirements (e.g. nutrition and health claims prohibitions and health warning statements) should be introduced to address the broad range of harms associated with alcohol consumption.

CHOICE also supports the inclusion of standard drink information on alcohol products. Specifically, CHOICE would like the number of standard drinks per bottle displayed prominently on the label as well as the volume of one standard drink. This information should be in a uniform position on the front or back of the bottle so that consumers can easily locate this information and use it to monitor their alcohol consumption.

**Recommendation 40:** Labelling laws should require alcohol labels to prominently display the number of standard drinks per bottle and the volume of one standard drink.

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<sup>29</sup> National Preventative Health Taskforce. (2009), *Australia: The Healthiest Country by 2020 – Technical Report 3: Preventing alcohol related harm in Australia: a window of opportunity*. Commonwealth of Australia.



## 4. Food labelling presentation

### 4.1. Readability

#### Q21. Should minimum font sizes be specified for all wording?

Marketing information and claims are often displayed more prominently on the front of food labels in order to attract consumers' attention. Mandatory information is usually placed on the back and side of packs in smaller font. Consumers often have to spend longer looking at this information to compare nutrition information, search ingredients lists and determining a product's country of origin.

Establishing minimum font sizes is one way of ensuring that labels are legible. Colour contrast and font style also influence readability. Minimum font sizes should be established for nutrition information panels, ingredients lists, country of origin statements, net weight and date marking. Minimum font sizes are already established for mandatory warning statements and country of origin labelling for unpackaged foods.

CHOICE is aware that UK Food Standards Agency guidelines specify a minimum font size of 8 point for all mandatory food labelling information<sup>30</sup>. The guidelines also provide advice on font style and contrast.

**Recommendation 41:** Standard 1.2.9 Legibility Requirements should be reviewed in an effort to improve readability of the mandatory food labelling requirements. This may include:

- Establishing minimum font sizes for elements such as nutrition information panels, ingredients lists and country of origin declarations.
- Revising existing minimum font sizes to improve readability.
- Specifying font styles that should be used to convey mandatory information.
- Providing better guidance on suitable colour contrast.

#### Q22. Are there ways of objectively testing legibility and readability?

Food labels should be legible for a wide range of consumers, including the elderly and others with minor vision impairment. While CHOICE does not have expertise in this area, we

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<sup>30</sup> Food Standards Agency. (2008), *Food labelling – Clear food labelling guidelines*, <http://www.food.gov.uk/multimedia/pdfs/clearfoodlabelling.pdf> Accessed 10/05/10.



believe that organisations such as Vision Australia and the Council on the Aging may be able to provide guidance on these issues from the perspective of their stakeholder groups. Vision Australia has guidelines for producing readable text<sup>31</sup> and downloadable tools on colour contrast.

CHOICE proposes that consumer research be done with Australian consumers to determine comprehensibility of current information and to test any proposed changes to labelling. Consumer research should take into consideration the target of labelling statements, e.g. the elderly or lower socio-economic groups.

CHOICE's front of pack nutrition labelling research found that while there was socio-economic status was associated with consumer comprehension of the monochrome % DI system favoured by the food industry, with consumers from lower socioeconomic six times less likely to identify the healthier of two products compared to consumers of higher socioeconomic status. Socio-economic status was not related to comprehension of the other three labelling systems which used traffic light colours.

Given that consumers of lower socioeconomic status have a greater burden chronic disease, it is vital that any information designed to assist consumers to make healthy choices is easily understood by this target group.

An increasing number of products are being developed and/or marketed to address health problems that are prevalent among adult consumers. These include products fortified with phytosterols that may help consumers to manage their cholesterol. Many middle-aged and older consumers require reading glasses so the legibility of nutrition information will be important for these consumers to assess nutrition information panels of products that are making claims about health benefit.

Country of origin labelling is another labelling element that should be tested on a range of consumer groups to determine how consumers comprehend various country of origin labelling statements, logos and images.

**Recommendation 42:** Any changes to food labelling legibility and readability requirements should be supported by consumer testing to ensure legibility and readability by a range of target audiences, particularly consumers who require reading glasses.

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<sup>31</sup> Vision Australia, (2010), *Guidelines for producing readable text*, <http://www.visionaustralia.org/info.aspx?page=1845>, Accessed 11/05/10.



## 4.2. Comprehensibility

### Q23. How best can the information on food labels be arranged to balance the presentation of a range of information while minimising information overload?

First, CHOICE queries the extent to which consumers are feeling overloaded with information. We frequently hear from consumers who want more information on food labels, not less. Consumer research conducted by the Australia New Zealand Food Authority (now FSANZ) found that while consumers acknowledge that they may not use all labelling elements, the information they don't use will be important for other consumers<sup>32</sup>. In fact, the research found that very few respondents thought there was too much information, though they thought some information was confusing. CHOICE agrees that the amount of labelling information and the way it is presented can impact on consumers' understanding.

CHOICE urges the Panel to conduct consumer testing before making any recommendation to alter the presentation of food labels to ensure that they continue to provide valued information in a way that consumer can understand.

**Recommendation 43:** Consumer testing should underpin any decisions to amend the presentation of food labelling information.

Currently, mandatory information such as nutrition information and ingredients lists is overshadowed by marketing claims on the front of food labels. Establishing minimum font sizes for mandatory information could help to improve the prominence of this information. Introducing front of pack traffic light labelling and improving health claims regulation will provide consumers with more balanced information about how healthy a food is.

**Recommendation 44:** Stricter health claims regulation and mandatory front-of-pack nutrition labelling involving traffic light colours should be used to give consumers balanced information about the healthiness of packaged foods.

Manufacturers also highlight selected country of origin or ownership claims on the front of food labels but mandatory country of origin statements are less prominent on the back of food labels. CHOICE believes that selective marketing claims can give a misleading impression of the country of origin. The *Extra Juicy* fruit juice example was discussed earlier in this submission. A '100% Australian Owned' claim is placed prominently on the front of the pack in 5mm font. However, the country of origin statement is on the back in 2mm font. The statement "made in Australia from imported and local ingredients" suggest that the juice is predominantly imported.

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<sup>32</sup> Australia New Zealand Food Authority. (2001), *Food labelling issues – Qualitative Consumer Research, Results*, p19 [http://www.foodstandards.gov.au/\\_srcfiles/Part%20a%20from%20Food%20labelling%20issues.pdf](http://www.foodstandards.gov.au/_srcfiles/Part%20a%20from%20Food%20labelling%20issues.pdf) (Accessed 13/05/10)



This could be improved by requiring marketing statements to refer consumers to more detailed information “\*see back of pack for country of origin details” or requiring claims to be in proximity to the mandatory factual information e.g. a claim about fruit content should be located near the ingredients lists or a mandatory country of origin statement should sit alongside a “Australian Owned claim”.

**Recommendation 45:** Marketing claims should refer consumers to related mandatory information (e.g. nutrition information panels, ingredients lists, country of origin declarations) or be made in proximity to mandatory information.

**Q24. In what ways can consumers be best informed to maximise their understanding of the terms and figures used on food labels?**

The current review of food labelling laws provides an opportunity to educate consumers about food labelling information. Any changes to food labelling laws that result in changes to what consumers see on food labels should be supported by public education campaigns. This could take the form of issue-specific education e.g. in-store information advising consumers on different country of origin claims or an advertising campaign teaching consumers how to use traffic light labels similar to the UK Food Standards Agency campaign.

CHOICE believes that FSANZ should play a greater role in providing public education about food labels. This would be consistent with their objective to ‘protect public health and safety’ and a strengthened role in supporting preventive health strategies.

**Recommendation 46:** A new public education strategy should inform consumers about food labelling information and how it should be used and interpreted, particularly where this review results in changes to labelling information. Government agencies should lead these activities, in consultation with a broad range of stakeholders.

**Q25. What is an appropriate role for government in relation to use of pictorial icons on food labels?**

Pictorial representation can be an effective way of providing information in a way that consumers can quickly interpret. It will also be beneficial for consumers with lower literacy levels or those for culturally and linguistically diverse backgrounds. The UK Food Standards Agency identified this when it tested consumer understanding of the traffic light labelling system – the traffic light colours were vital in helping consumers to identify healthier foods<sup>33</sup>.

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<sup>33</sup> Food Standards Agency. (2009), *Comprehension and use of UK nutrition signposting scheme*, Prepared for the Food Standards Agency by British Market Research Bureau Limited. <http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>. Accessed 13/5/2010.



The Australian government supported an ‘Australian Grown’ logo as a way of conveying country of origin information. The ‘Australian Grown’ logo is the same as the ‘Australian Made’ logo, the only variation is that one has the words ‘Australian Made’ underneath while the other has the words ‘Australian Grown’. ‘Australian Made’ does not give any indication of the origin of the ingredients, ‘Australian Grown’ does. The claim ‘Product of Australia’ can also be used in conjunction with the logo. CHOICE questions whether consumers really comprehend the difference between the three tiers of country of origin claims when the same logo is used for each tier and the pictorial representation is more prominent than the words.

CHOICE believes that the government could make better use of pictorial icons and logos to convey food labelling messages. Strict criteria would need to underpin the use of pictorial images. Government oversight of these schemes would enhance consumer confidence in these icons. This could also be used to convey complex messages to consumers from culturally and linguistically diverse backgrounds.

However, pictorial representations can also give consumers a misleading impression about products. In recent years, ACCC has taken action against a number of manufacturers making misleading representation about fruit content by including images of premium fruits like berries<sup>34 35 36</sup>.

Some underlying principles for government oversight of food endorsement schemes are outlined in response to Questions 16 and 18.

**Recommendation 47:** Governments should explore how pictorial icons and logos can be used to convey food labelling information (e.g. traffic lights and country of origin logos) effectively and without misleading consumers.

### 4.3. Information format

#### Q26. What objectives should inform decisions relevant to the format of 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.

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<sup>34</sup> Australian Competition and Consumer Commission. (15 November 2007), *ACCC court action against Arnott’s Biscuits*. <http://www.accc.gov.au/content/index.phtml/itemId/803645>. Accessed 14/05/10.

<sup>35</sup> Australian Competition and Consumer Commission. (13 September 2006), *Uncle Toby’s stops claims Roll Ups are ‘made with 65% real fruit’*. <http://www.accc.gov.au/content/index.phtml/itemId/762460/fromItemId/2332>. Accessed 14/05/10.

<sup>36</sup> Australian Competition and Consumer Commission. (7 March 2004), *Cottee’s found to have misled consumers on cordial*, <http://www.accc.gov.au/content/index.phtml/itemId/524740>. Accessed 14/05/10.



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<sup>37</sup>. The NPHT pointed out that not only could an effective food labelling system guide consumers to make healthier choices; it could also provide 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 nutrition labelling 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.

In our previous submission to the review of food labelling law and policy, CHOICE outlined a number of principles that 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.

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<sup>37</sup> National Preventative Health Taskforce. (2009), Australia: The Healthiest Nation by 2020, Technical Report 1 - *Obesity in Australia: a need for urgent action*. Commonwealth of Australia.



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 of 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.

CHOICE's preferred approach is for a system that involves traffic light colours. Such a system would meet all the above criteria, and is supported by CHOICE's own consumer research as well as research by the UK consumer group Which?<sup>38</sup> and the UK Food Standards Agency.<sup>39</sup>

In 2008, CHOICE – in collaboration with a number of public health groups including the Cancer Council – conducted consumer research to see which front of pack nutrition labelling 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 (%DI) 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

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<sup>38</sup> Which? (2006), *Campaign Report: Healthy Signs*, Consumers Association UK.

<sup>39</sup> Food Standards Agency. (2009), *Comprehension and use of UK nutrition signposting scheme*, Prepared for the Food Standards Agency by British Market Research Bureau Limited. <http://www.food.gov.uk/multimedia/pdfs/pmpreport.pdf>. Accessed 13/5/2010.



higher socioeconomic groups. There was no such difference in consumers' ability to identify healthier products using the Traffic Light system.

Conversely, research by the Australian Food and Grocery Council suggests that many consumers *say* they use and understand the %DI system<sup>40</sup>. This research did not assess consumers' ability to use the system or compare it with other systems. Our research found that the 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 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 below 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.

Labelling 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

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

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.

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<sup>40</sup> 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).



**Recommendation 48:** A front of pack nutrition labelling system should be developed by the government in consultation with a broad range of consumer, public health and food industry stakeholders. The system should:

- use interpretive traffic light colours to convey information quickly in a way that the greatest number of consumers can understand;
- provide some numerical information about the amount of nutrients in the product;
- include descriptive terms such as ‘high’, ‘medium’ and ‘low’;
- be mandatory and used across all food categories;
- focus on the nutrients of greatest public health concern.

**Recommendation 49:** Policy guidelines must be developed in order to begin the development of a front of pack nutrition labelling system.

**Q27. What is the case for food labelling information to be provided on foods prepared and consumed in commercial (restaurants, take away shops) or institutional (schools, pre-schools, worksites) premises? If there is a case, what information would be considered essential?**

With consumers eating an increasing number of meals away from home, the foods sold in restaurants, cafes and take away stores contributes significantly to our nutrient intake. CHOICE supports additional regulation that requires quick service restaurants with standard menus to display nutrition information prominently at the point of sale. This could include kilojoule content on menu boards and/or more detailed nutrition information about total fat, saturated fat, sugars and sodium on menus.

With respect to institutional settings, foods sold to schools and pre-schools should be labelled so that canteen managers and staff can determine nutrition content and presence of ingredients such as allergens and additives. Individually packaged products should be subject to mandatory labelling requirements that apply to other foods. Specific nutrition guidelines should also apply to foods supplied to children in order to provide healthy nutritious foods, and limit the number of fatty, salty and sugary foods supplied to children in these settings.

**Recommendation 50:** Quick service restaurants should provide nutrition information at the point of sale so that consumers can identify healthier foods.



**Recommendation 51:** In addition to establishing healthy eating guidelines for schools and pre-schools, foods supplied in these establishments – when supplied in bulk and packaged for individual sale – should be adequately labelled to convey vital information such as nutrition information and ingredients such as allergens and additives.

**Q28. To what degree should the Food Standards Code address food advertising?**

FSANZ has a clear mandate to prevent misleading and deceptive conduct. Many of the claims and representations made on food labels are also made in advertisements. Therefore claims and representations about food that are defined in the Food Standards Code – in Section 1 labelling standards and Section 2 commodity standard – should apply to labelling and advertising. It would be inconsistent to establish different regulation for claims made in advertising, just as it would be inconsistent to require two separate agencies to enforce identical claims on food labels and claims made in advertising.

However, to date many of the claims made in advertising have been part of voluntary codes (e.g. the Code of Practice on Nutrient Claims in Food Labels and in Advertisements) or industry guidelines (e.g. the ACCC’s food descriptors guidelines) that aren’t mandatory standards. By defining food descriptors and regulating these claims in the Food Standards Code this should improve the enforcement of these claims in advertisements. However, food regulatory bodies will need the necessary powers and enforcement tools to regulate and enforce claims made in food advertisements, so that they will be more likely to deter industry non-compliance.

**Recommendation 52:** The definitions and food standards outlined in Sections 1 and 2 of the Food Standards Code should apply to claims and representations made on food labels as well as in advertisements.

**Recommendation 53:** Food regulatory bodies should be given the necessary powers and enforcement tools to regulate and enforce claims made in advertisements for food.



## 5. Administering and enforcing food labelling standards

### Q29. In what ways can consistency across Australia and New Zealand in the interpretation and administration of food labelling standards be improved?

CHOICE acknowledges that the shared administrative responsibilities between state and territory and Commonwealth governments as well as the New Zealand government agencies can result in inconsistent application and interpretation of food labelling laws. We also recognise that at the Commonwealth and state and territory levels there are a number of agencies with an interest in food labelling.

FSANZ, while not an enforcement agency, will have views on how the Food Standards Code should be interpreted having been responsible for developing and drafting food regulation. The ACCC enforce the Trade Practices Act which includes provisions on false and misleading representations. The ACCC takes action on selected issues but has no specific mandate to enforce the Trade Practices Act with respect to claims made on food products. In recent years, the ACCC has taken action on misleading country of origin claims and representations about fruit content (previously discussed); conventionally produced eggs being sold as organic eggs<sup>41</sup>; and a misleading Coca Cola advertising campaign that aimed to dispel supposed myths about the consumption of Coca Cola on weight and dental health<sup>42</sup>.

State and territory health and food authorities are responsible for enforcing food regulation – including food labelling – through their Food Acts. Fair trading departments generally do not actively enforce the TPA with respect to food labelling. This is likely to be due to lack of resources and the expectation that food and health agencies, and the ACCC adequately deal with this. Consumer Affairs Victoria is a notable exception.

CHOICE understands that a consultation process is underway to consider how interpretative advice on food standards could be centralised in order to improve consistency. A regulatory impact statement identified FSANZ as the preferred agency for providing centralised advice<sup>43</sup>. While we have not had the capacity to engage in this consultation process, CHOICE agrees with the principles behind the recommendation for FSANZ to take on the role of providing interpretative advice on the Food Standards Code.

As outlined in our previous submission, CHOICE also supports a single Commonwealth agency taking responsibility for administering and enforcing food labelling laws. We believe enforcement in a key part of administering food standards so any consideration of a

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<sup>41</sup> Australian Competition and Consumer Commission. (20 August 2007), *Court finds egg packer substituted organic with conventional eggs*, <http://www.accc.gov.au/content/index.phtml/itemId=796216>. Accessed 14/05/10.

<sup>42</sup> Australian Competition and Consumer Commission. (2 April 2009), *ACCC action on Coca Cola myth-busting*, <http://www.accc.gov.au/content/index.phtml/itemId/867233/fromItemId/142>. Accessed 14/05/10.

<sup>43</sup> Department of Health and Ageing. (2010), *Food Regulatory Reforms: Centralised Interpretive Advice on Food Standards – Regulatory Impact Statement*. Government of Australia.



centralised interpretation function should also investigate a centralised enforcement responsibility. This is discussed in response to the following question.

**Recommendation 54:** Centralising interpretation and administration of the Food Standards Code to a national agency will improve consistency across Australia.

**Q30. In what ways can consistency, especially within Australia, in the enforcement of food labelling standards be improved?**

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 in enforcement. 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. It also places a greater enforcement burden on the enforcement agencies in states that have large food manufacturing industries, resulting in limited capacity to enforce food labelling standards that apply to products that are available throughout Australia, not just the state where the manufacturer or retailer is based.

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.



**Recommendation 55:** Responsibility for enforcing the Food Standards Code should be transferred to a national agency.

**Q31. What are the strengths and weaknesses of placing the responsibility for the interpretation, administration and enforcement of labelling standards in Australia with a national authority applying Commonwealth law and with compatible arrangements for New Zealand?**

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 single agency could not take on the administration and enforcement of food labelling standards only; they would also need to take on other consumer protection responsibilities outlined in the state and territory food acts. It would be illogical and only add to inconsistencies in enforcement if a Commonwealth agency was responsible for enforcing the labelling law that requires food labels to carry ingredients lists, and have state and territory agencies responsible for ensuring that the product contained the ingredients and food that were represented on the label.

One example is milk. Standard 2.5.1 sets out minimum milk fat and protein requirements for products sold as 'milk' and 'skim milk'. If a product labelled 'milk' fails to meet these requirements it could be viewed as an issue of misleading labelling (a product is labelled as 'milk' when it isn't) or a failure to meet the commodity standards set out in Standard 2.5.1. If the national agency was only responsible for labelling it is unclear which agency would be responsible for taking enforcement action in this case.

CHOICE believes that a national agency should take on responsibility for enforcing Sections 1 and 2 of the Food Standards Code, while responsibility for enforcing Section 3 safety standards could – and probably should – remain with the states and territories.

**Recommendation 56:** A single agency should be responsible for enforcing labelling and commodity standards set out in Sections 1 and 2 of the Food Standards.



**Q32. If such an approach was adopted, what are the strengths and weaknesses of such a national authority being an existing agency; or a specific food labelling agency; or a specific unit within an existing agency?**

Ultimately, as long as the agency was properly established – with adequate authority, expertise and resources – it should not matter if the national agency is an existing or new agency. However, CHOICE believes that it is not necessary to establish a new agency for the sole purpose of enforcing food labelling laws. It would be more cost effective to establish food labelling enforcement responsibility within an existing agency. The most logical agencies to take on these roles are: FSANZ, the ACCC and AQIS. The role of each organisation is outlined in the paragraphs below. A table on the next page outlines the pros and cons of each organisation taking on enforcement responsibility for food labelling regulation.

***Food Standards Australia New Zealand:*** FSANZ already has food, food safety, nutrition, labelling and legal expertise due to its responsibility to develop food regulation, including food labelling laws.

There are arguably advantages to having an industry-specific agency in terms of expertise and dedicated funding. However, if FSANZ was to take on enforcement responsibility it should be done by a discrete enforcement unit that operates separately from the staff with responsibility for developing food standards. It should be managed by a branch head with a strong track record from a state enforcement agency or the ACCC.

***Australian Competition and Consumer Commission:*** The ACCC already takes some action on food labels that are misleading or deceptive. If the ACCC were to take over responsibility for enforcing food labelling it would require staff with specific expertise in food regulation, nutrition, public health, food technology and food labelling. As outlined above CHOICE believes that a national agency could not take on enforcement of labelling provisions without taking over responsibility for enforcing commodity provisions outlined in Section 2 of the Food Standards Code.

The ACCC already has enforcement responsibility for specific industries such as energy and water. Therefore there is already a precedent for the ACCC to take on food industry-specific regulation. It also has some expertise in *ex-ante* regulation of products, through its product safety function, which we note has recently been expanded.

***Australian Quarantine and Inspection Service:*** All foods sold in Australia much meet the requirements set out in the Food Standards Code – regardless of whether they are imported or locally produced. AQIS is currently responsible for enforcing the Food Standards Code as it applies to imported foods. While it would need additional capacity and expertise, and a change in legislation that would give it responsibility to enforce food standards for locally produced foods, this would perhaps be a more logical fit than the ACCC as it is already responsible for enforcing commodity standards as well as labelling standards.



<b>Food Standards Australia New Zealand</b>	
<b>PROS</b>	<b>CONS</b>
<p>Broad expertise in and understanding of food regulation, food labelling, nutrition, food production and manufacture, consumer research.</p> <p>Would provide an efficient feedback loop with sections of the organisations that are developing standards.</p> <p>Sits within the Health portfolio and should place the health and interests of consumers first.</p>	<p>Relatively immature regulator that would take longer to establish itself an experienced and effective regulator.</p> <p>Currently has no responsibility for enforcing food standards.</p> <p>Lacks expertise in consumer law and prefers ACCC to deal with issues of misleading and deceptive conduct.</p> <p>Lacks full investigative powers and enforcement tools.</p> <p>Concern that FSANZ may be influenced by food industry.</p>
<b>Australian Competition and Consumer Commission</b>	
<b>PROS</b>	<b>CONS</b>
<p>Has existing responsibility for regulating claims on food labels.</p> <p>Has enforcement expertise across a broad range of industries.</p> <p>Full set of investigative and enforcement tools and powers.</p> <p>Already has responsibility for some industry-specific regulation e.g. water and energy.</p> <p>More removed from day to day food industry influence.</p> <p>Would be a more effective regulator in the short-term as it already has enforcement expertise and reputational strength.</p>	<p>Lacks specialised expertise in food regulation and nutrition, and a detailed understanding of food.</p> <p>Focussed on misleading and deceptive conduct, not enforcement of food labelling more broadly.</p> <p>Focuses on national companies and nationally available products and brands.</p>



Australian Quarantine and Inspection Service	
PROS	CONS
Has existing responsibility for enforcing the Food Standards Code, with respect to imported foods. Has expertise in food regulation and food production.	More closely aligned with industry as it sits within the Primary Industries portfolio. Not widely recognised by the public as an enforcement agency for food labelling.

**Recommendation 57:** Regardless of which national agency takes on enforcement of food labelling regulation, there are a number of fundamental criteria that must be met.

- Independence from the food industry.
- Strong legislation establishing enforcement powers.
- A full suite of enforcement tools, including information gathering powers and a range of penalties suitable for different infringements.
- Expertise in food labelling, nutrition, food regulation and general consumer protection law.
- Sufficient funding and capacity to undertake enforcement across a range of labelling issues, as well as proactive compliance monitoring.

**Recommendation 58:** Transferring responsibility to an existing agency is likely to be more cost effective than establishing a new enforcement agency.

CHOICE is undertaking further work to determine the implications of a national agency taking on enforcement responsibility for food labelling, and the strengths and weaknesses of each agency taking on that responsibility. At this stage, CHOICE feels the ACCC would be the most effective regulator, provided it has additional capacity and expertise, and a broader scope than misleading and deceptive conduct. Once CHOICE has completed further work in this area we would be pleased to discuss with the panel our preferred approach to enforcing food standards relevant to labelling.

**Q33. If such an approach was adopted, what are appropriate mechanisms to deal with constitutional limits to the Commonwealth's powers?**

CHOICE recognises that there may be some constitutional limitations and these will have to be addressed in greater detail when particular options are considered. However, in general, we consider it unlikely that constitutional barriers would be insurmountable.



In regards to the constitutional head of power for the regulatory regime in general and to establish a new regulator, we consider the powers relied upon in similar areas of economic regulation would be sufficient to cover the great majority of situations. A combination of the following powers (in conjunction with the incidental power) under section 51 of the Constitution would appear to provide a sound basis for the great majority of issues to be regulated:

- corporations;
- trade and commerce;
- quarantine; and
- weights and measures.

Further, we assume that the regime will be developed cooperatively with the States and, to the extent necessary, enabling legislation in the individual states and territories could fill any gaps in the national scheme, along similar lines to that used for the Australian Consumer Law. Although a reference of state powers to the Commonwealth would be preferable, it may be difficult to secure in practice.

With regard to constitutional limitations on the enforcement powers of the national agency, we consider it would be unlikely there would be a requirement for powers that extend beyond those already exercised by Commonwealth agencies such as the ACCC, ASIC, AQIS and other economic regulators. With regard to cross-vesting of Commonwealth jurisdiction, we consider the Australian Consumer Law provides a suitable model.

**Q34. What are the advantages and disadvantages of retaining governments' primary responsibility for administering food labelling regulations?**

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 Authority<sup>44</sup> (now FSANZ) demonstrated that consumers have a great deal of faith that governments are policing what goes into food. They trust labels to be accurate as long as government is ensuring compliance and keeping manufacturers honest.

In CHOICE's view the food industry generally has a history of ignoring or pushing the boundaries of food regulation, particularly in the area of health claims as evidenced by the ACCC action against the Coca Cola Myths marketing campaign. In fact, CHOICE awarded Glaceau Vitamin Water a Shonky Award for presenting a sweetened beverage as a healthy product, and for openly mocking health claims regulation (see Attachment 2).

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 Cola<sup>45</sup>. Earlier this year, the ACCC too action against Golden Circle for continuing to use labels that claimed the company was Australian owned long after the company was sold to foreign investors.

The Code of Practice on Nutrient Claims in Food Labels and in Advertisements 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 (e.g Gippsland Dairy Yoghurt, Fantastic Rice Crackers). FSANZ has since proposed that nutrition content claims be included in the new mandatory standard on nutrition, health and related claims.

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.

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<sup>44</sup> 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.

<sup>45</sup> Australian Competition and Consumer Commission. (2 April 2009), *ACCC acts on Coca-Cola myth-busting*. <http://www.accc.gov.au/content/index.phtml/itemId/867233/fromItemId/142>. Accessed 20/11/09.



It is likely that the elements of food labelling considered appropriate by industry for self- or co-regulation are 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 developing weak codes, 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 displayed or broadcasted 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.

There are however some examples of effective co-regulatory models in the food sector. CHOICE understands that Fruit Juice Australia has a code of conduct backed by a product testing program. All major fruit juice manufacturers are signatories to this code.

Another effective approach to co-regulation is the use of third party certification schemes such as organic certification. Co-regulatory schemes that rely on robust and independent third party verification schemes to authorise claims could provide greater consumer confidence in certain labelling claims, while reducing the regulatory burden on governments to verify the claims. Consumer confidence would be further enhanced if some level of government oversight or approval was given to third-party endorsement schemes so that consumers would know which schemes and claims they could trust. Consumer representation should also be required of any co-regulatory body. Further information is provided above in response to Question 18.

**Recommendation 59:** Government must retain responsibility for regulating food labelling as government oversight is vital for ensuring that consumers can have confidence in the food supply.

**Recommendation 60:** Co-regulatory systems could be used to further enhance consumer confidence and address some new demands for information but should not replace existing government oversight of food labelling.

**Q35. If a move to either: self regulation by industry of labelling requirements; or co-regulation involving industry, government and consumers were to be considered, how would such an arrangement work and what issues would need to be addressed.**

As stated above, CHOICE does not support the use of self-regulatory approaches to food regulation. We are not confident that the food industry has demonstrated that it can be relied



on to regulate practices of food businesses when food businesses stand to benefit financially from making misleading claims on food labels.

Co-regulatory schemes may be effective in some areas, e.g. organic and free range production, the use of sustainable palm oil. CHOICE does not support the use of co-regulatory approaches to the current mandatory food labelling requirements or to the proposed health claims standard on nutrition and health claims. We believe that government should retain regulatory and enforcement responsibility for labelling elements that have implications for public health and safety.

The key issues that would need to be address in any co-regulatory system are outlined below. This list is based on CHOICE's recent work on food endorsement schemes.

**Consumer confidence and accessibility** – Consumer confidence in the regulatory system is paramount. Replacing existing government regulation with self regulatory or co-regulatory schemes could undermine consumer confidence in the food labels and the food supply.

Complaints processes should not be overly onerous or complex that they discourage consumer involvement or require them to have a detailed understanding of food labelling laws. For example, consumer complaints about TV advertisements require consumers to have an understanding of the complex co-regulatory scheme and the Children's Television Standards and whether a complaint should be directed to the Australian Communications and Media Authority, the broadcaster that aired an offending advertisement or the ASB.

**Independence and conflicts of interest** – self-regulatory and co-regulatory schemes can present conflicts of interest when industry is given responsibility for regulating itself. For example, members of Free Range Egg and Poultry Australia develop and agree on their own free-range standards which present a conflict of interest as members may set less stringent standards that more members can achieve, but they may not meet consumer expectations of free-range products.

While the RSPCA Approved Farming scheme sets stringent animal welfare standards, RSPCA staff are responsible for enforcing them. Other schemes such as the Australian Certified Organic scheme use independent, third-party certifiers to certify products to the Australian Certified Organic standards.

**Funding and administration** – How co-regulatory schemes are funded, particularly industry contribution and oversight will need to ensure independence from influence of food industry members with vested interests. Governing bodies should be established with equal consumer and industry participating, and an independent chair, a model that is used in other sectors.

**Government oversight** – The level of government oversight of a co-regulatory scheme will influence consumer confidence in a co-regulatory scheme. It's likely that consumers would have greater confidence in co-regulatory schemes over self-regulatory schemes because governments play a greater role in co-regulatory schemes. Governments should be responsible for setting standards and reviewing their effectiveness every two or three years.



**Transparency** – Information about co-regulatory schemes should be easily accessible to members of the public; and should provide information about funding and administration, individuals and organisation that are responsible for the standards and their enforcement, the standards that are being enforced, enforcement processes and outcomes of enforcement activities.

**Verification processes** – The way compliance is verified and substantiated is important for ensuring consumer confidence in co-regulatory systems. For example, are all products verified or just a sample? If it's a sample, how is that sample selected? How frequently are monitoring and enforcement activities undertaken? Are products tested and manufacturers audited or does the scheme rely on company records? Are products sampled from the marketplace or do manufacturers provide samples? Are manufacturers required to substantiate claims prior to market or is enforcement based on post-market surveillance? Who is responsible for verification – food businesses, the scheme administrator or independent third party assessors? Obviously, verification process will vary depending on the type of labelling claim that the co-regulatory scheme is addressing.

**Stakeholder engagement** – An effective and robust co-regulatory system will engage a broad range of stakeholders (governments, industry, consumers, academics, health professionals and other experts and interest groups) in the development and administration of the scheme e.g. governance, development of standards and consideration of complaints etc.

**Monitoring and enforcement program** – Schemes need to clearly establish a program of proactive monitoring and enforcement, as well as processes for responding to complaints or ad-hoc cases of non-compliance. The program of work and results should be made public where possible.

**Recommendation 61:** If co-regulatory systems are used to regulate food labelling, in addition to existing mandatory requirements, governments would need to ensure that the following aspects are addressed:

- consumer confidence and accessibility;
- independence and conflicts of interest;
- funding and administration;
- government oversight;
- transparency;
- verification processes;
- stakeholder engagement; and
- monitoring and enforcement.



**Q36. In what ways does such a split or shared responsibility (between food and fair trading agencies) strengthen or weaken the interpretation and enforcement of food labelling requirements?**

It is the responsibility of state and territory authorities to enforce the Food Standards Code through their relevant Food Acts. These include consumer protection provisions. State and territory fair trading agencies are responsible for enforcing the Trade Practices Act, and this includes provisions on misleading and deceptive conduct that are applicable to food labelling.

Shared responsibility for preventing misleading and deceptive conduct with respect to food may result in food and fair trading agencies ‘passing the buck’ between each other, particularly when resources are limited. Boundary issues arise where there is inconsistency between provisions of the Food Standards Code or consumer protection provisions of the Food Acts and the Trade Practices Act.

For example, the TPA sets out provisions for country of origin claims for all consumer goods but does not make it mandatory for products to carry a country of origin declaration. The Food Standards Code requires all packaged products and some unpackaged goods to carry country of origin declarations. If a food manufacturer makes a misleading claim either the ACCC or the relevant state and territory food and health authority where that manufacturer is based could take action as it is a breach of both the Trade Practices Act and the Food Standards Code. In practice, it is usually the ACCC who takes action against misleading country of origin claims on foods even though they are not required under the Trade Practices Act.

Standards Australia does not enforce food standards however it does oversee the development of Australian Standards (e.g. the Australian Standard on Organic and Biodynamic Products), and in some cases can administer Australian Standards. Australian Standards are not mandatory unless they are called up in specific legislation or regulation. This limits the effectiveness of Standards Australia approach, although Australian Standards do carry weight in many industries and can guide the ACCC’s enforcement action.

As previously stated, CHOICE supports the use of Australian Standards to regulate some aspects of labelling, provided they are referenced in the Food Standards Australia New Zealand Act 1991 and/or the Food Standards Code which would make them mandatory.

**Q37. What are the strengths and limitations of the current processes that define a product as a food or a complementary medicine?**

CHOICE has previously raised concerns about the grey area surrounding foods and complementary medicines that can result in inconsistent regulatory requirements or manufacturers cherry picking whether to classify their products as foods (therefore subject to food regulation) or complementary medicines (subject to therapeutic good regulation).

CHOICE believes that any product that claims to have health or therapeutic benefits should be required to provide evidence to support these claims prior to the product going to market.



Therapeutic and health claims influence consumer purchases and create expectations that many not be met through normal consumption of a food or complementary medicine.

CHOICE supports the most recent FSANZ proposal that a series of general level health claims be pre-approved for use on food labels based on the available evidence and only pre-approved health claims would be permitted. CHOICE believes a similar approach should be taken for complementary medicines.

In recent years, particularly since the rise of the juice bar industry, the number of food products containing herbal supplements has increased, leading to claims or implications that these products provide health benefit such as immunity, energy and stress relief, or assist with weight loss. Unlike vitamins and minerals, consumers are unlikely to consume these ingredients in a variety of foods across the day therefore they may not consume a sufficient amount to deliver the claimed or implied health benefit.

New Zealand has not repealed its Dietary Supplements Code as intended. This has resulted in some products that aren't permitted under the Food Standards Code being brought into Australia via New Zealand. As a result Australian-based manufacturers who are commercially disadvantaged by the discrepancy have applied to FSANZ for permission to produce similar products in Australia. This circumvents previous decisions not to permit some dietary supplement products in the Food Standards Code.

**Recommendation 62:** The NZ Dietary Supplements Code should be repealed to avoid products that aren't permitted under the Food Standards Code being imported into Australia via the Trans-Tasman Mutual Recognition Agreement.

**Q38. What are the strengths and weaknesses of having different approaches to the enforcement of food labelling standards for imported versus domestically produced foods?**

Food labelling standards should apply equally to imported and domestically produced foods so that consumers have the same information regardless of where their food comes from. This would also ensure that consumers can compare labels easily. For example, it would be more difficult for consumers to use nutrition panels to make healthy choices if they are comparing an Australian nutrition information panel with an American nutrition facts panel which present information in a different format and doesn't include nutrition information per 100g of a product.

CHOICE supports the role of AQIS in enforcing the Food Standards Code as it can prevent non-compliant foods making it to market. We acknowledge that AQIS only assesses an average of 5% of imported products that aren't deemed to be high risk. Post-market surveillance and enforcement by other food enforcement agencies should incorporate locally produced and imported foods.

**Recommendation 63:** The same food labelling standards should apply to all food regardless of whether it is imported or locally produced. Post-market enforcement and surveillance should cover imported and locally produced foods.

**Recommendation 64:** AQIS should continue to have responsibility for enforcing the Food Standards Code.

**Q39. Should food imported through New Zealand be subject to the same AQIS inspection?**

The labelling standards in the Food Standards Code apply to Australia and New Zealand, though New Zealand has opted out of country of origin labelling. If manufacturers in New Zealand are producing food to the same labelling standards as Australian manufacturers then there should be no need for additional AQIS inspection requirements.

However, there may be other reasons why products imported from New Zealand would require AQIS inspection. Some products are subject to specific import restrictions e.g. fresh fruit and vegetables, and meat. Safety and residue testing may be required where there are different food safety requirements and agricultural and veterinary chemical standards.

**Recommendation 65:** Foods imported through New Zealand may be subject to AQIS inspection, when:

- they are not produced in accordance with the Food Standards Code, but can be legally imported under the Trans-Tasman Mutual Recognition Agreement; and/or
- Australia and New Zealand have different standards e.g. maximum residue limits and country of origin labelling.



## Attachments

# GENETICALLY MODIFIED FOOD SURVEY

Australian Consumers' Association - September 2003

The food regulator Foods Standards Australia New Zealand is currently reviewing the labelling requirements for genetically modified (GM) foods. For this review, ACA is forwarding a submission that considers consumers' opinions regarding GM foods and their labelling. A key element of this submission is the results of an online opinion survey conducted in September 2003 with 645 Choice Online members.

This report summarises these results.

Table 1.

<b>Opinion on eating genetically modified food</b> Base = all respondents	n=644 %
I have serious concerns and I am very worried	47
I have some concerns and I am somewhat worried	37
I have no concerns and I am not at all worried	11
I don't know enough about the issues to have an opinion	5

Table 2.

<b>Behaviour when food shopping</b> Base = all respondents	n=644 %
Always check food labels to ensure the food has not been genetically modified	28
Try to look for food that has not been genetically modified	44
Find it is too much effort to check for GM labels	12
Don't care about GM status and it is not a criteria when I buy food	16

Table 3.

<b>Should there be comprehensive labelling of foods containing ingredients derived from gene technology or genetic modification?</b> Base = all respondents	n=643 %
Strongly agree	84
Somewhat agree	10
Somewhat disagree	4
Strongly disagree	2
Don't know	1

Table 4.

<b>What they assume a label without any reference to GM means</b> Base = all respondents	n=641 %
The food has not been genetically modified at all	44
The food may contain small traces of GM ingredients	9
The food or an ingredient may have been genetically modified	30
I am unsure about what it means	18

Table 5.

<b>Canola oil from genetically modified canola does not have to be labelled as 'genetically modified'. This is because the GM components aren't considered to be present in the end product. Do you agree with this?</b> Base = all respondents	n=642 %
Strongly agree	7
Somewhat agree	10
Somewhat disagree	15
Strongly disagree	60
Don't know	8

Table 6.

<b>Demographics of respondents</b> Base= All respondents	This survey %	ABS (2001 Census) %
<b>Gender</b>		
Male	49	49
Female	51	51
<b>Age</b>		
Less than 35 years	25	48
35 – 44 years	30	15
45 – 54 years	25	14
55 – 64 years	15	13
Over 65 years	5	12
<b>Highest level of tertiary education</b>		
No tertiary qualification	9	54
Certificate	14	16
Advanced diploma and diploma	16	6
Bachelor degree	30	10
Graduate diploma/ certificate	12	1
Postgraduate degree	18	2



30 June 2008

Mr Mark Pearson  
Executive General Manager  
Enforcement and Compliance Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2801

Dear Mr Pearson,

**Re: Complaint about Glaceau Vitamin Water**

I am writing to draw your attention to what CHOICE believes is a case of misleading and irresponsible marketing, contravening both the Trade Practices Act and the Australia New Zealand Food Standards Code. This complaint relates to a range of beverages sold as *Glaceau Vitamin Water*, produced by Coca Cola Amatil Australia Pty Ltd for an organisation called the Centre for Responsible Hydration.

The product is described as a 'nutrient enhanced water beverage' and is made according to formulated beverages permissions outlined in Standard 2.6.2 of the Australia New Zealand Food Standards Code. This standard permits a range of vitamins and minerals to be added to water-based beverages that may be sweetened with sugar, fruit juice and/or artificial sweeteners. CHOICE opposed the introduction of these permissions because we believed that it would result in the misleading promotion of sugary beverages as a health food because of added vitamins and minerals.

CHOICE has a number of complaints relating to *Glaceau Vitamin Water* products generally, as well as specific complaints about the marketing of individual products within this range.

***General comments***

CHOICE believes that the names of these products e.g. 'revive', 'essential', 'focus' and associated marketing messages convey health benefits. This is inconsistent with current health claims regulations.

We also believe these the colour of these drinks and the use of fruits in product names creates the overall impression that they contain a significant amount of fruit when in fact most have less than 1% juice while some contain no fruit juice at all. All products contain flavour yet this is not

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 Fax 02 9577 3377 Email [ausconsumer@choice.com.au](mailto:ausconsumer@choice.com.au) [www.choice.com.au](http://www.choice.com.au)  
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indicated on the front of the pack in the name of the product or the product description e.g. ‘kiwi and strawberry flavoured’.

CHOICE believes that the above factors, combined with the product name ‘vitamin water’ create the overall impression that this is a healthy food when in fact one serve of this product provides an average adult woman with around one third of her recommended dietary intake for sugar.

### *Specific comments*

#### **triple x – acai-blueberry-pomegranate (triple antioxidants)**

This product is a deep red colour similar to that of apple and blackcurrant juice. The words *acai-blueberry-pomegranate (triple anti-oxidant)* in the product name indicate the presence of these juices. However, a small disclaimer above the nutrition information panel indicates that in reality it “contains less than 1% juice”.

The ingredients list states that there is a mere 0.027% of apple, blueberry, pomegranate and acai extract. This is not consistent with the name of the product ‘*triple x acai-blueberry-pomegranate*’ as the name suggests that there is more acai extract than blueberry and pomegranate and does not disclose that there is more apple extract than any other extract.

CHOICE believes that despite the small disclaimer, the overall impression is that this product contains more than 0.027% acai, blueberry and pomegranate juice.

It also grossly overstates the health benefit and antioxidant contribution of the three fruits listed in the name of the product by claiming to have “the power of triple antioxidants which help keep you healthy and fight free radicals”.

#### **focus – kiwi-strawberry (c+b+lutein)**

This product is an opaque pink colour and claims to contain kiwi and strawberry. Yet neither ingredient is listed in the ingredients list. The ingredients list states the presence of flavour yet at no time is the word ‘flavoured’ used on the front of the pack to indicate that the product only contains kiwi and strawberry flavour rather than kiwi and strawberry juice. A small disclaimer above the nutrition information panel indicates that the product “contains less than 1% juice”. Yet the ingredients list indicates that ‘vegetable juice’ is only present to colour the product.

CHOICE believes that despite the disclaimer, the overall impression is that this product contains more than 1% kiwi and strawberry juice.

#### **revive – fruit punch (c+b3+b5+b6+b12)**

This product is a clear red colour. Despite the name ‘fruit punch’ it “contains less than 1% juice”. This is indicated in a small disclaimer above the nutritional information panel. The product contains more flavour than juice, when in fact ‘fruit and vegetable juice’ is only listed as a colour.

#### **energy – citrus (b+caffeine+guarana)**



This product is an opaque yellow colour and the word ‘*citrus*’ in the product name implies that it contains citrus juices. Yet a small disclaimer above the nutrition information panel indicates that it “contains no juice”. The ingredients list indicates the presence of flavour but the word ‘flavoured’ is not used on the front of the pack to inform consumers that it only contains citrus flavour rather than citrus fruits or their juices.

### **essential – orange-orange (c+calcium)**

This product is an orange colour and the ‘*orange-orange*’ in the name implies that there is orange juice in the product. However, a small disclaimer above the nutrition information panel indicates that the product “contains no juice”. At no time is the word ‘flavoured’ used to indicate that it contains orange flavour rather than orange juice.

The product name ‘*essential*’ overstates the need for an individual to consume this drink, while the following marketing message on the front of the pack implies that it is healthier to drink a bottle of this vitamin water than a glass of orange juice.

*“ah, orange juice commercials. funny stuff. mum cheerily prepares some huge breakfast while the rest of her family sleeps. sure, this could happen. but every morning? please. maybe if mum were heavily medicated, in which case, we wouldn’t condone operating a stove or any electrical appliance.”*

*for those of us who don’t live in an orange juice commercial, there’s a way to get your morning vitamin C plus calcium, so you can get your day started right minus the whole stepford mum thing.”*

### **power-c – dragonfruit (c+b)**

This product is a clear pink colour. A small disclaimer above the nutrition information panel indicates that it “contains less than 1% juice” but the ingredient list indicates that ‘vegetable juice’ is only present as a colour. The ingredients list also indicates that the product contains dragonfruit flavour yet the word ‘flavoured’ is not used on the front of the pack to inform consumers that it only contains dragonfruit flavour rather than juice.

The marketing message on the front of the bottle says:

*“legally, we are prohibited from making exaggerated claims about the potency of the nutrients in this bottle. therefore, legally we wouldn’t be able to tell you that after drinking this, gary from ballarat started using horseshoes as a thighmaster® or that this drink gave sue from wagga enough strength to bench press llamas. heck, we can’t even tell you this drink gives you the power to do a thousand pinkie push-ups..... just ask tom from fremantle.”*

*Legally we can’t say stuff like that – cause that would be wrong, you know?*

CHOICE appreciates that the marketing messages on the front of these products are designed to be humorous. However, we believe that this marketing message ridicules current regulations relating to the use of health claims. It shows a blatant disrespect for the role of food regulation in protecting consumers from overzealous, unsubstantiated and potentially misleading claims about the health and nutritional benefits of individual products.



CHOICE is also aware that the manufacturer Coca Cola Amatil Australia Pty Ltd is a member of a food industry organisation that has been lobbying to have the proposed health claims regulation rejected or reviewed by the Australian New Zealand Food Regulation Ministerial Council in favour of a co-regulatory approach that would give the food industry greater responsibility to regulate itself. When such a large and powerful multinational beverage manufacturer is openly mocking food regulations and those responsible for establishing and upholding them – albeit in a humorous way – they should be reprimanded rather than rewarded with greater regulatory responsibility and freedom to make these sorts of inappropriate claims.

This case also illustrates why CHOICE and numerous other public health organisations support the application of nutrient profiling criteria to products carrying nutrition content claims. Through the use of nutrient content claims and reference to the presence of added vitamins and minerals, the packaging and marketing of this product create the impression that it is healthy when in fact one serve contains almost seven teaspoons of sugar which is around one third of an average adult woman's recommended dietary intake for sugar. This product also fails the FSANZ nutrient profiling criteria meaning that it is not deemed to be healthy enough to carry a health claim.

CHOICE asks that the Australian Competition and Consumer Commission review the labelling and marketing of these products and take the necessary action to prevent consumers being further misled by explicit and implied claims about the fruit content and nutritional benefits of these drinks.

Should you wish to discuss this complaint further, please do not hesitate to contact me on (02) 9577 3375 or at [chughes@choice.com.au](mailto:chughes@choice.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Clare Hughes", written over a light grey rectangular background.

**Clare Hughes**  
**Senior Food Policy Officer**

cc: Mr George Davey – Director-General, NSW Food Authority