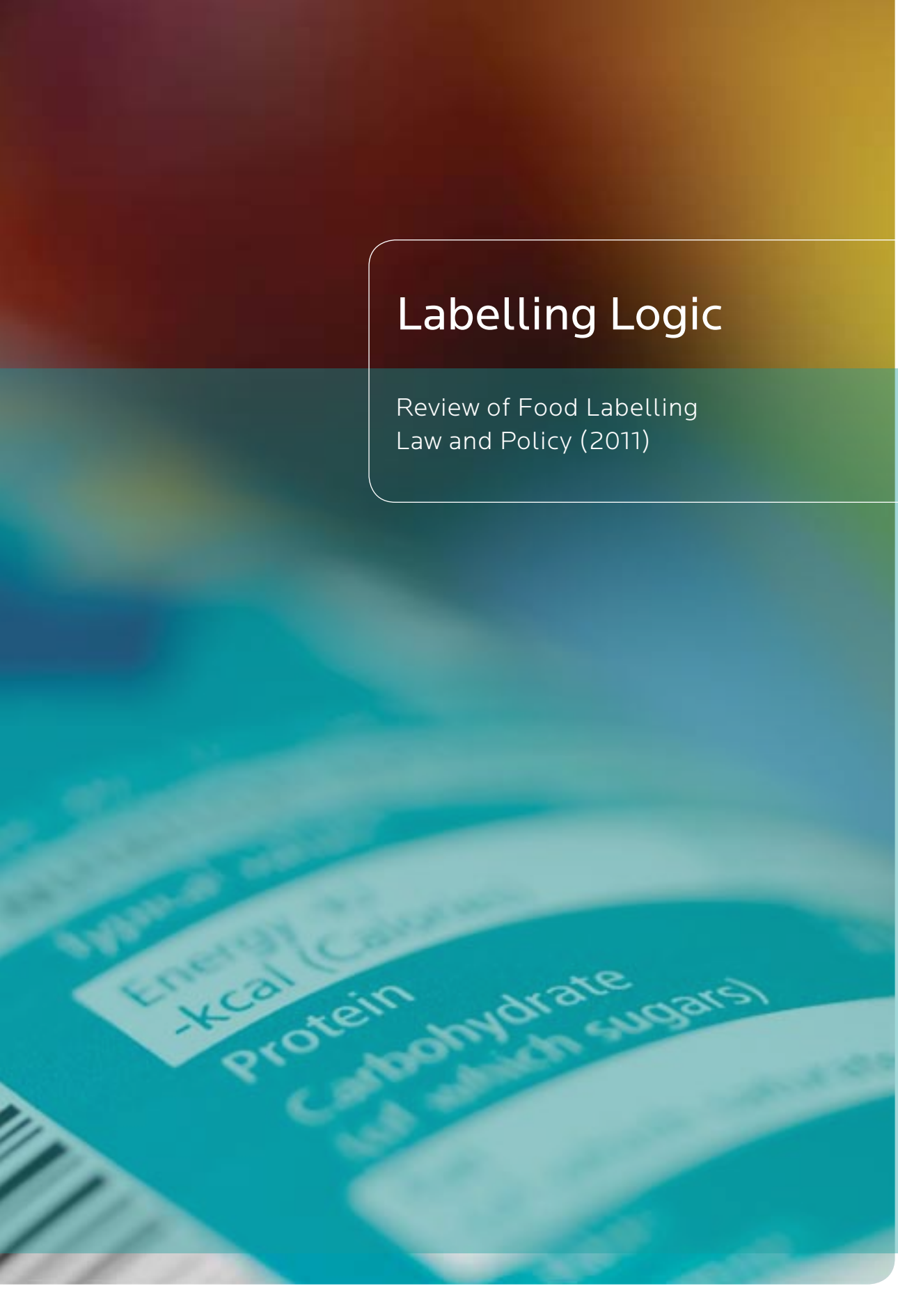
Labelling Logic

Review of Food Labelling
Law and Policy (2011)



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Panel Members:

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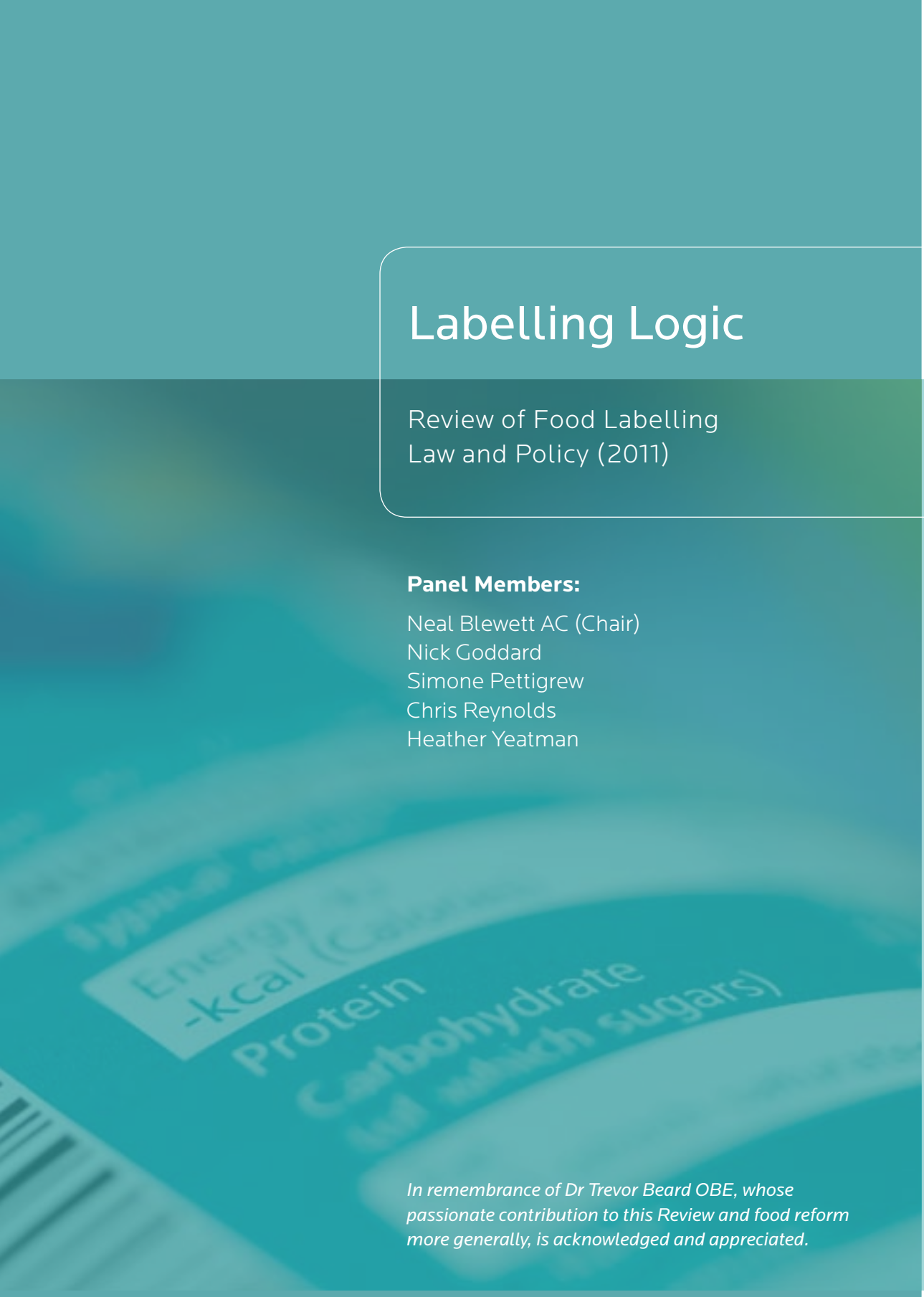

In remembrance of Dr Trevor Beard OBE, whose passionate contribution to this Review and food reform more generally, is acknowledged and appreciated.

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Foreword by the Chair

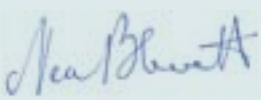
The food label is a finite space faced with an ever increasing demand to contain ever more information. It is one of the most highly valued and sought after communication channels in the marketplace. It is also a highly contested space with competing pressures from consumers and food suppliers, a competition which demands of government a more strategic approach to food labelling policy.

The Panel has sought to provide a conceptual framework within which such strategic decisions can be made. The interaction between food labels and consumers is complex, making it difficult to evaluate the impact of label information on consumer behaviour. Evaluations of label effectiveness therefore need to account for the incremental changes in knowledge and behaviours that occur over time. The Panel believes that amendments to the labelling requirements should be assessed against broad public health strategies, consumer rights to accurate and consistent information, and the legitimate marketing needs of industry.

In undertaking this Review of Food Labelling Law and Policy, we were asked to address numerous food labelling issues that have challenged governments here and abroad for many years. My colleagues on the Panel provided a wide range of skills, experience and thoughtful debate that proved invaluable in considering these issues. I thank them for their dedication — it has been a privilege for me to Chair the Panel. This Final Report is the result of consultation with many stakeholders, draws on evidence and consideration of the international experience and owes much to robust debate within the Panel itself.

We are grateful for the contributions of the many individuals, organisations, government departments and ministers who met with the Panel, participated in discussion forums and contributed almost 7000 written submissions to the Review. While somewhat overwhelming, this input has been fundamental to the Review process. I would also like to acknowledge the support provided to the Panel by the dedicated Secretariat, based in the Department of Health and Ageing.

The Panel is fully conscious that food labelling requirements impose costs, of the need to justify regulatory burdens imposed on industry and of the need for transition measures to ease the introduction of change. The Panel's approach has been one of responsive regulation, seeking to involve stakeholders in developing self-regulatory and co-regulatory measures, but recognising that more prescriptive modes of regulation are often appropriate.



Dr Neal Blewett AC
Chair
27 January 2011

Contents

Abbreviations and Acronyms

ACCC	Australian Competition and Consumer Commission
AFGC	Australian Food and Grocery Council
AIHW	Australian Institute of Health and Welfare
AQIS	Australian Quarantine and Inspection Service
Bureau (the)	Food Labelling Bureau
COAG	Council of Australian Governments
Code (the)	Food Standards Code
Codex (the)	*Codex Alimentarius*
Codex Commission (the)	Codex Alimentarius Commission
C&C Act	*Competition and Consumer Act 2010* (Australia) (previously the *Trade Practices Act 1974*)
CoOL	Country-of-origin labelling
DNA	Deoxyribonucleic acid
FAO	Food and Agriculture Organization (of the United Nations)
FASD	Fetal Alcohol Spectrum Disorders
FoPL	Front-of-pack labelling
FRSC	Food Regulation Standing Committee
FSANZ	Food Standards Australia New Zealand
FSANZ Act	*Food Standards Australia New Zealand Act 1991*
GATT	General Agreement on Tariffs and Trade
GI	Glycemic Index
GM	Genetically modified
ISC	Implementation Sub-Committee (of the FRSC)
ISO	International Organization for Standardization
JECFA	Joint Expert Committee on Food Additives
FSA	Food Standards Agency (United Kingdom)

MAF	Ministry of Agriculture and Forestry (New Zealand)
Ministerial Council	Australia and New Zealand Food Regulation Ministerial Council
MTL	Multiple traffic lights
NHMRC	National Health and Medical Research Council
NIP	Nutrition Information Panel
NGO	Non-government organisation
NZCC	New Zealand Commerce Commission
NZFSA	New Zealand Food Safety Authority
Panel (the)	Independent Expert Panel for the Review of Food Labelling Law and Policy
Review (the)	Review of Food Labelling Law and Policy
RO	Agreement on Rules of Origin
SPS	Agreement on Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
TFA	Trans fatty acids
Treaty (the)	Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System
TTMRA	Trans-Tasman Mutual Recognition Arrangement
VITAL	Voluntary Incidental Trace Allergen Labelling
VRA	VITAL Risk Assessment
WHO	World Health Organization
WHO Global Strategy (the)	World Health Organization Global Strategy for Diet, Physical Activity and Health
WTO	World Trade Organization

Preface

The Review of Food Labelling Law and Policy (the Review) was announced by the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) in October 2009. The Review was jointly funded by the Australian Government and all the Australian States and Territories, while the New Zealand consultations were supported by the New Zealand Government.

An independent expert Panel, chaired by former Australian Health Minister Dr Neal Blewett AC, was appointed to conduct the Review. Dr Blewett was joined on the Panel by food industry communications, marketing and corporate affairs professional Mr Nick Goddard, consumer behaviour expert Dr Simone Pettigrew, public health law academic Dr Chris Reynolds and food and nutrition policy academic Dr Heather Yeatman. (For a background on each, please see Appendix A.)

The terms of reference (see Appendix B) for the Review required the Panel to:

1. examine the policy drivers impacting on demands for food labelling;
2. consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. consider what policies and mechanisms are needed to ensure that government plays its optimum role;
4. consider principles and approaches to achieve compliance with labelling requirements and appropriate and consistent enforcement;
5. evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front-of-pack labelling against terms of reference 1–4 above;
6. make recommendations to improve food labelling law and policy.

The scope of 'food labelling' included any information, representations and claims about food that are, or could be, regulated under the Australia and New Zealand Food Standards Code (the Code) or consumer protection laws.

The Review process included extensive consultation with stakeholders, with an initial invitation to provide written submissions on food labelling issues. The Panel received more than 6,000 submissions during the initial call for submissions (see summary at Appendix C). These submissions, as well as issues in the literature and the media, informed the *Issues Consultation Paper* (available on the Review website), released by the Panel on 5 March 2010 to launch the second stage of public consultation. More than 550 people attended public consultation forums that the Panel conducted in all capital cities in Australia and in Wellington and Christchurch in New Zealand. The Panel also met with key stakeholder groups, ministers and representatives from government departments. Almost 600 submissions

were provided by the closing date of the second round on 14 May 2010. Written records of these public forums, as well as the submissions received during the second consultation period (unless marked as confidential), were published on the Review website at <www.foodlabellingreview.gov.au>.

In formulating this Report, the Panel has taken into account the range of stakeholder views, in addition to information gathered from government and non-government reports, consumer research, the scientific literature and other sources. The Panel has also given due consideration to the policies and experiences of other countries.

Executive Summary

The executive summary is structured in terms of the Matters for Review outlined in the terms of reference. Numbers in brackets refer to the recommendations in the Report, a full list of which is provided at the end of this summary and in context, within the body of the Report.

The food label is the arena in which many of the most intense disputes over food take place, for the label provides the most public face for controversies over food. It is also one of the most highly valued and competitively sought after communication channels in the market place. As the battle for space on the label has intensified, and the often competing interests of consumers, industry and government come to the fore, food labelling policy has evolved in a sporadic fashion to satisfy a range of interests, including protecting consumers. The crux of the Review was therefore to address the tensions between these interests that drive policy and to seek to resolve them. The 61 recommendations contained in this Report are designed to address this ad hoc approach to food labelling and provide a clear path forward.

Examine the policy drivers impacting on demands for food labelling

The Panel suggests that a consideration of the policy drivers — consumers' needs for information; industry's need for marketing flexibility and minimal regulatory burdens; and government's objectives in the area of individual and population health — provides a framework for deriving principles for regulatory intervention in order to steer the flow of labelling events. Exploration of these demands revealed the ubiquity and breadth of health concerns, particularly the growing acceptance of government's preventative health role in reducing the risk of chronic diet-related disease. A definition of public health in the *Food Standards Australia New Zealand Act 1991* would decrease ambiguity regarding the role of the food regulator and would place appropriate focus on broader public health issues [1].

As a consequence of this recognition, the Panel recommends that a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label [9, 10]. Once established, the comprehensive Nutrition Policy should inform the development or variation of labelling standards. Such an operational base will in part address the requirement for evidence of significant health or behavioural impact and economic assessments for individual food standards, a requirement which at present can act as a barrier to utilising the food label more effectively.

What principles should guide decisions about government regulatory interventions in food labelling?

The cornerstone of the Panel's approach is an Issues Hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. This classification, which is essentially a risk hierarchy, governs the initiation of regulatory action, the modes of intervention and where rules and oversight should lie [2]. Regulatory actions in relation to food safety, preventative health and new technologies should be initiated primarily by government and referenced in the Code. Regulatory actions in relation to consumer values issues should be initiated generally by industry [37, 38]. These would rely on the 'misleading or deceptive' provisions in consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Code [36]. The most significant consequence of this referencing is that country-of-origin labelling — a consumer values issue — be provided for in a specific consumer information standard for food within consumer protection legislation rather than in the Code [41].

The modes of intervention should be mandatory for food safety, on which point there is little disagreement. For preventative health there would be a mixture of mandatory and co-regulation requirements, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures. For new technologies there should be, as a general principle, mandated identification on the label of foods or ingredients treated or produced by such technologies for a period of 30 years after their introduction into the human food supply chain, at the end of which time the need for such identification should be reviewed [28]. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure, as the Panel argues in the case of country-of-origin issues [40, 41] or the ineffectiveness of self-regulatory schemes [39].

Consider what policies and mechanisms are needed to ensure that government plays its optimum role

In the light of the above principles, government would play its optimum role in food labelling by ensuring labelling to guarantee food safety; by working with industry to use labelling to encourage healthy eating and population health; by taking a prudent approach to the labelling of foods and ingredients produced or processed by new technologies; and by acting to ensure that industry self-regulation in the field of consumer values provides consistent and accurate labelling to enable consumers to make informed choices.

The whole system is envisaged as one of responsive intervention that requires coordination across portfolios [4, 21, 23, 41, 59] and jurisdictions [3, 57, 58]. If softer measures fail there would be opportunity for escalation

to more prescriptive modes of regulation. Moreover, where label changes are recommended, the Panel advocates a generous time period to encompass the change, as well as grandfathering for labels on products that have a long shelf life.

There is also a need to broaden the coverage of food labelling laws to reflect the range of environments within which people now purchase their foods. The significant extent to which Australians and New Zealanders now consume food outside the home has led the Panel to recommend the provision of nutrition information on menus/menu boards in chain food service outlets that have standardised menu items, and on vending machines [18].

Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement

As a general principle of good governance, it is necessary that the members of the community feel confident that the food regulatory system, which is designed to protect its health and safety, operates effectively. As such, once the case for a labelling standard has been established and becomes part of the Code, it must be monitored and enforced by the jurisdictions with as high a priority as any other food standard [3, 6, 7, 57]. A similar high priority should be given by the consumer protection agencies to consumer values issues [4, 59]. Labelling standards should also be written in such a way that they both clearly convey what is required of industry and are capable of being enforced should a prosecution occur [60]. In addition, a more versatile range of enforcement provisions should be introduced [58].

The Panel accepts that for a range of reasons it is desirable to leave responsibilities for the statutory requirements for compliance and prosecution as they are currently. However, if food labelling is to be taken seriously, a Food Labelling Bureau (the Bureau) should be established to advise Australian and New Zealand ministers on all aspects of labelling policy [61]. Resources for this Bureau must reflect the high profile that food labelling has as the most public face of food policies, standards and laws. The Bureau's role would be administrative, advisory and a monitor of compliance and enforcement. It would be user-friendly for consumers and industry and would marshal and support the resources already on the ground.

Evaluate existing work on health claims

The Panel proposes a responsive regime of nutrition, health and related claims covering the use of simple words that may infer health implications [19] and a hierarchy of substantiation of claims and validation through an agreed nutrient profiling system, plus further conditional requirements [20].

In addition, the Panel recognises the need to prevent the subversion of the proposed system by unscrupulous use of trade names and trademarks that could imply claims prohibited in the Code [21]. Governments may also wish to make health claims through mandatory health messages supporting preventative health strategies. These would have to meet the same substantiation requirements as industry health claims. In addition, as they involve taxpayer funds, intervention would have to be justified by reference to both the extent of the health problem and the strength of the causal links between the health problem and the messages, and only be embarked upon as part of a multifaceted social campaign [22, 24]. The introduction of health claims in the food regulatory regime will make urgent the development of a seamless regulatory approach for food, complementary medicines and dietary supplements [23].

Evaluate existing work on front-of-pack labelling

The use of interpretative symbols or endorsements on labels has the potential to convey essential nutrition information when included as one of multiple strategies to facilitate healthy eating choices [50]. As there is now a growing consensus between industry, consumers, health advocacy groups and governments in favour of front-of-pack labelling, the issue before the Panel was what form it should take. The Panel recommends that a multiple traffic lights (MTL) front-of-pack labelling system be introduced. Such a system is to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory [51, 52, 53]. The Panel also recommends that chain food service outlets across Australia and New Zealand be encouraged to display the MTL system on menus/menu boards [54], but that beverages containing alcohol be exempt from any MTL requirements [55].

Evaluate current policies, standards and laws relevant to food labelling

Using this overall framework, the Panel addressed a number of detailed issues raised in the submissions and consultations which are not dealt with elsewhere in this summary.

Public Health and Food Safety: In relation to the ingredients list, the Panel recommends work on a number of codes of practice to enable consumers to readily identify additives, colourings and flavourings of agreed medical priority [8, 11], and changes to the declaration of added sugars, added fats and added vegetable oils [12]. The Panel recommends several changes to the Nutrition Information Panel (NIP), including the possible explicit inclusion of trans fatty acids [13]; the inclusion of fibre content [14]; clarification of salt content [15, 16]; and some simplification of presentation [17].

Alcohol: While recognising the unique features of alcohol as a food, the Panel sees no prima facie reason for excluding alcohol from the scope of the Review, given alcohol's inclusion in the Code. The Panel is of the view that the requirement for alcohol to display additional labelling information does not automatically exempt it from adhering to other existing requirements. The Panel further believes that there are compelling reasons for applying labelling changes to alcohol in the light of the growing evidence relating to the short- and long-term adverse health effects of alcohol consumption. The Panel therefore recommends that a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages [25]; that the energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products [26]; and that drinks that are mixtures of alcohol and other beverages comply with all general nutrition food labelling requirements [27].

New Technologies: Given the general principle enunciated in this Review that there should be mandatory labelling of new technologies for 30 years after their introduction into the food supply chain and recognising that irradiated foods have been in the food supply for a generation, the Panel recommends that the necessity for mandatory labelling of irradiated foods be reviewed [34]. While recognising the difficulties, the Panel nevertheless believes it is urgent for the credibility of the regulator that a standard be established for regulating the presence of nanotechnology in the food production chain [35]. On the vexed question of genetically modified foods, the Panel assessed the various exemptions from genetic modification labelling in line with its principles and the relevant scientific evidence. The Panel endorses the exemption of foods or ingredients that have no altered characteristics or no detectable novel deoxyribonucleic acid (DNA) or protein [29]; endorses the present exemption for adventitious presence but recommends follow-up and monitoring of any adventitious event [30], and the provision of adequate laboratories, resources and skills for this and other tasks [33]; does not support the present exemption for flavours [31]; and, given the general position the Panel has taken on foods from chain food service outlets and vending machines, does not support their exclusion from the requirement to declare genetically modified foods or ingredients [32].

Consumer Values Issues: The remaining issues in the consumer values field relate to the one presently mandated intervention — country-of-origin labelling (CoOL). While CoOL is comprehensive in Australia, there are a few inexplicable primary product exceptions, and the Panel believes the loophole should be closed and that CoOL should be extended to cover all primary products for retail sale [40]. There is extraordinary public confusion over the 'Made in Australia' claim and the Panel favours the development of an unambiguous and consumer-friendly Australian-origin claim based on the ingoing weight of the various components of the food, excluding water [42].

Presentation: The effectiveness of the recommendations in practice will depend on the consumer's ability to notice, read and comprehend the information provided. It is a fundamental principle that food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population [5, 43]. The Panel recommends a prescriptive minimum font style [44] and a minimum contrast level [46] for all mandatory information, and the emboldening of warning and advisory statements and of allergens [47]. The Panel would encourage government and industry to work together to establish guidelines for other presentational factors [45] and to work towards a co-location of mandatory health information presented in a standardised fashion [48]. New information technologies should be investigated both for automated label assessments [49] and for forms of extended product labelling [56].

Conclusion

This Report provides a comprehensive framework within which future food labelling law and policy can be determined. As well, using this framework, the Panel has made a wide range of specific recommendations to improve food labelling law and policy. Consequentially and appropriately, given the wide-ranging scope of the Review and its terms of reference, adoption of these recommendations will lead to:

- a clear path to guide government decisions about regulatory intervention;
- a fundamental shift in thinking about the remit of Food Standards Australia New Zealand (FSANZ) and the broader food regulatory system with regard to public health;
- an impetus for industry collaboration to achieve self- and co-regulatory mechanisms that ensure a level playing field while meeting the demands of consumers and governments;
- a more strategic, transparent and informative food labelling system, which instils confidence in Australian and New Zealand consumers;
- greater resourcing from governments to support food labelling that is meaningful, consistent and that addresses issues identified in a comprehensive nutrition policy; and
- a centralised body for, and source of, food labelling information for consumers, industry and government, with roles in administration, advice and monitoring.

A full list of the Panel's recommendations is provided on the following pages.

Recommendations

Policy Drivers of Food Labelling

Recommendation 1: That the *Food Standards Australia New Zealand Act 1991* be amended to include a definition of public health to the effect that: 'Public Health is the organised response by society to protect and promote health, and to prevent illness, injury and disability'.

Principles and Criteria

Recommendation 2: That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.

The modes of intervention should be mandatory for food safety; a mixture of mandatory and co-regulation for preventative health, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures; and mandatory with time limits for new technologies. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure or the ineffectiveness of self-regulatory schemes.

Recommendation 3: That once the case for a labelling standard has been established and becomes part of the Food Standards Code, sufficient resources be allocated to ensure that it is effectively monitored and enforced.

Recommendation 4: That consumer protection concerns be accorded a high priority by the relevant government agencies and complaints be properly processed and resolved.

Recommendation 5: That information on food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population.

Public Health and Food Safety

Recommendation 6: That the food safety elements on the food label be reviewed with the aim to maximise the effectiveness of food safety communication.

Recommendation 7: That there be more effective monitoring and enforcement of the existing requirements in the Food Standards Code to provide mandatory warning and advisory statements and allergen declarations on packages of food not for retail sale, foods for sale at restaurants and other food outlets, foods from mobile food vendors and vending machines, and foods for catering purposes.

Recommendation 8: That the Voluntary Incidental Trace Allergen Labelling system be explored as a possible supplementary model to manage food label declarations relating to the adventitious presence of allergens in foods.

Recommendation 9: That a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label. Key aspects of the framework to be:

a. the provision of food safety and nutrition information and education strategies to protect and promote the health of the population, including articulated roles for food label elements;
b. the encouragement of the provision of healthy foods within the food supply to facilitate healthy diets;
c. the setting and application of nutrient criteria and dietary guidance;
d. the facilitation of social and other research to improve understanding of how label information is used and its impact on food selection, eating behaviours and the food supply;
e. the establishment of monitoring and surveillance systems for dietary/nutrition practices that include the use and understanding of food labels.

Such a policy should be developed as a priority, within the framework of the governments' preventative health agendas and cognisant of the present Australian initiatives on food security and a national food plan.

Recommendation 10: That the *Food Standards Australia New Zealand Act 1991* be amended to require Food Standards Australia New Zealand to 'have regard' to the comprehensive Nutrition Policy when developing or reviewing labelling standards.

Recommendation 11: That industry develop in consultation with government, medical authorities and relevant consumer organisations a voluntary code of practice and education initiatives to enable consumers to quickly identify label information relating to additives, colourings and flavourings that are of agreed medical priority for sensitive consumers.

Recommendation 12: That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms 'added sugars' and 'added fats' and/or 'added vegetable oils' be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).

Recommendation 13: That mandatory declaration of all trans fatty acids above an agreed threshold be introduced in the Nutrition Information Panel if manufactured trans fatty acids have not been phased out of the food supply by January 2013.

Recommendation 14: That declaration of total and naturally occurring fibre content be considered as a mandatory requirement in the Nutrition Information Panel.

Recommendation 15: That voluntary declaration of potassium content in the Nutrition Information Panel be actively considered by industry. If nutritional policy guidance recommends the reduction in consumption of potassium for at-risk population groups in the future, disclosure of potassium in the Nutrition Information Panel should become mandatory.

Recommendation 16: That social research be undertaken to determine effective mechanisms to present sodium/salt information on food labels to facilitate consumers' understanding and use of this information.

Recommendation 17: That the declaration in the Nutrition Information Panel of amount of nutrients per serve be no longer mandatory unless a daily intake claim is made.

Recommendation 18: That declaration of energy content of standardised food items on the menu/menu boards or in close proximity to the food display or menu be mandatory in chain food service outlets and on vending machines. Further, information equivalent to that provided by the Nutrition Information Panel should be available in a readily accessible form in chain food service outlets.

Recommendation 19: That a responsive regulatory approach to the use of simple words and terms that may infer health implications be commenced, with the food industry working with Food Standards Australia New Zealand to develop a Code of Practice covering consistent use of definitions for such words and terms, with a view to their use being restricted if appropriate constraint is not implemented.

Recommendation 20: That the Standard for nutrition, health and related claims on food labels which reflects agreed public health goals be finalised and that it include the following:

a. a hierarchy of substantiation of claims at the various levels, that would encompass use of defined nutrition words and terms, pre-approved relationships, authoritative sources, systematic review and pre-market assessment and approval;

b. a requirement that all foods that carry a nutrition, health and related claim comply with an agreed nutrient profiling system;
c. a requirement that the presence of a nutrition, health and related claim triggers relevant information disclosures in the Nutrition Information Panel or ingredients list; and
d. a requirement that the presence of a general or high level claim triggers display of standardised front-of-pack label information.

Recommendation 21: That applications for trade names and trademarks be scrutinised by the relevant agencies to identify and reject words and devices that have the effect of inferring health implications that are otherwise prohibited under the Food Standards Code.

Recommendation 22: That mandatory messages supporting preventative health strategies may be instigated by governments, provided the following conditions are met:

a. substantiation requirements are fulfilled — the epidemiological evidence is strong;
b. the message is consistent with the comprehensive Nutrition Policy;
c. food labelling is an appropriate response to the problem; and
d. the label is one part of a multifaceted campaign.

Recommendation 23: That a consistent, seamless regulatory approach for nutrition, health and related claims be adopted for food, complementary medicines and dietary supplements.

Recommendation 24: That generic alcohol warning messages be placed on alcohol labels but only as an element of a comprehensive multifaceted national campaign targeting the public health problems of alcohol in society.

Recommendation 25: That a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages, as support for ongoing broader community education.

Recommendation 26: That energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products.

Recommendation 27: That drinks that are mixtures of alcohol and other beverages comply with all general nutrition labelling requirements, including disclosure of a mandatory Nutrition Information Panel.

New Technologies

Recommendation 28: That as a general principle all foods or ingredients that have been processed by new technologies (i.e., all technologies that trigger pre-market food safety assessments) be required to be labelled for 30 years from the time of their introduction into the human food chain; the application of this principle to be based on scientific evidence of direct impact on, or modification of, the food/ingredient to be consumed. At the expiry of that period the mandatory labelling should be reviewed.

Recommendation 29: That only foods or ingredients that have altered characteristics or contain detectable novel DNA or protein be required to declare the presence of genetically modified material on the label.

Recommendation 30: That any detection of an adventitious genetically modified event be followed by a period of monitoring and testing of that food or ingredient.

Recommendation 31: That foods or ingredients with flavours containing detectable novel DNA or protein not be exempt from the requirements to declare the presence of genetically modified material on the label.

Recommendation 32: That foods or ingredients that have been genetically modified and would require declaration if labelled be declared on menu/menu boards or in close proximity to the food display or menu in chain food service outlets and on vending machines.

Recommendation 33: That governments ensure effective monitoring of labelling requirements in the Food Standards Code relating to genetically modified foods or ingredients through support for sufficient Australian and New Zealand laboratories, observing world best practice protocols, and with the necessary resources and analytical skills.

Recommendation 34: That the requirement for mandatory labelling of irradiated food be reviewed.

Recommendation 35: That Food Standards Australia New Zealand and other relevant bodies develop as a matter of urgency a standard for regulating the presence of nanotechnology in the food production chain, consistent with the recommendations in this Report relating to new technologies.

Consumer Values Issues

Recommendation 36: That Food Standards Australia New Zealand consider adopting, by reference in the Food Standards Code, values-based definitions and/or standards relating to specific food production methods and processes, if requested by industry, to achieve consistency of definitions.

Recommendation 37: That the relevant livestock industries consider the benefit of establishing agreed standards under the auspices of Standards Australia or Standards New Zealand for terms related to animal husbandry (e.g., 'free range', 'barn laid' and 'caged' in the case of poultry).

Recommendation 38: That the value of industry-initiated self-regulatory intervention be recognised and that industry in collaboration with special interest groups further develop and apply a responsive and more structured self-regulatory approach to consumer values issues that incorporates:

a. the role that voluntary codes of practice can play in relation to the evolution of standard definitions for values-based claims;
b. the role that certification schemes can play in effectively communicating values-based messages; and
c. the development of agreed standards through existing frameworks such as International Organization for Standardization, Standards Australia or Standards New Zealand.

Recommendation 39: That a monitoring regime for self-regulatory measures be established and when evidence of systemic failure to provide accurate and consistent values-based information to enable consumers to make informed choices is found, a more prescriptive mode of regulation is triggered.

Recommendation 40: That Australia's existing mandatory country-of-origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale.

Recommendation 41: That mandatory requirements for country-of-origin labelling on all food products be provided for in a specific consumer product information standard for food under the *Competition and Consumer Act 2010* rather than in the Food Standards Code.

Recommendation 42: That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.

Presentation

Recommendation 43: That the Perceptible Information Principle be used as a guide for labelling presentation to maximise label comprehension among a wide range of consumers.

Recommendation 44: That a minimum font size of 3.5mm in an open font style in mixed case be applied for mandated information, with the exception of small package sizes where the minimum font size should be 1.5mm.

Recommendation 45: That a set of guidelines be developed in consultation with industry that includes reference to other presentation factors such as letter and line spacing, text justification and stroke width.

Recommendation 46: That a minimum contrast level of 70% for mandated information be stipulated in the Food Standards Code.

Recommendation 47: That warning and advisory statements be emboldened and allergens emboldened both in the ingredients list and in a separate list.

Recommendation 48: That industry be encouraged to develop a set of guidelines relating to the co-location of mandatory health information presented in a standardised manner on the label. Government should facilitate this process through the provision of appropriate resources and expertise.

Recommendation 49: That the development of an automated label assessment tool be investigated that can gauge a label's compliance with mandated legibility requirements and those stipulated in relevant voluntary codes.

Recommendation 50: That an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities.

Recommendation 51: That a multiple traffic lights front-of-pack labelling system be introduced. Such a system to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory.

Recommendation 52: That government advice and support be provided to producers adopting the multiple traffic lights system and that its introduction be accompanied by comprehensive consumer education to explain and support the system.

Recommendation 53: That ongoing monitoring and evaluation of the multiple traffic lights system be undertaken to assess industry compliance and the effectiveness of the system in improving the food supply and influencing consumers' food choices.

Recommendation 54: That chain food service outlets across Australia and New Zealand be encouraged to display the multiple traffic lights system on menus/menu boards. Such a system be mandatory where general or high level health claims are made or equivalent endorsements/trade names/ marks are used.

Recommendation 55: That any beverages containing alcohol be exempt from nutrition-related front-of-pack labelling requirements.

Recommendation 56: That the potential of new information technologies be considered by consumer organisations, industry and government to provide extended product labelling for non-mandatory information.

Compliance and Enforcement

Recommendation 57: That monitoring and enforcement of food labelling requirements of the Food Standards Code (accuracy as well as the presence of labelling information) be considered equally important as other aspects of the Food Standards Code and the responsible agencies be given the appropriate level of resources to meet their obligations.

Recommendation 58: That the Model Food Provisions and the food acts of the jurisdictions be amended to allow a more versatile range of enforcement provisions, such as the power to make orders or require user-paid compliance testing consequent on a breach or impose enforceable undertakings in relation to non-compliant labelling.

Recommendation 59: That consumer protection concerns related to food labelling be accorded a high priority by the relevant consumer protection agencies (Australian Competition and Consumer Commission, New Zealand Commerce Commission, and State and Territory consumer protection agencies) and complaints be processed and resolved in a timely and transparent manner.

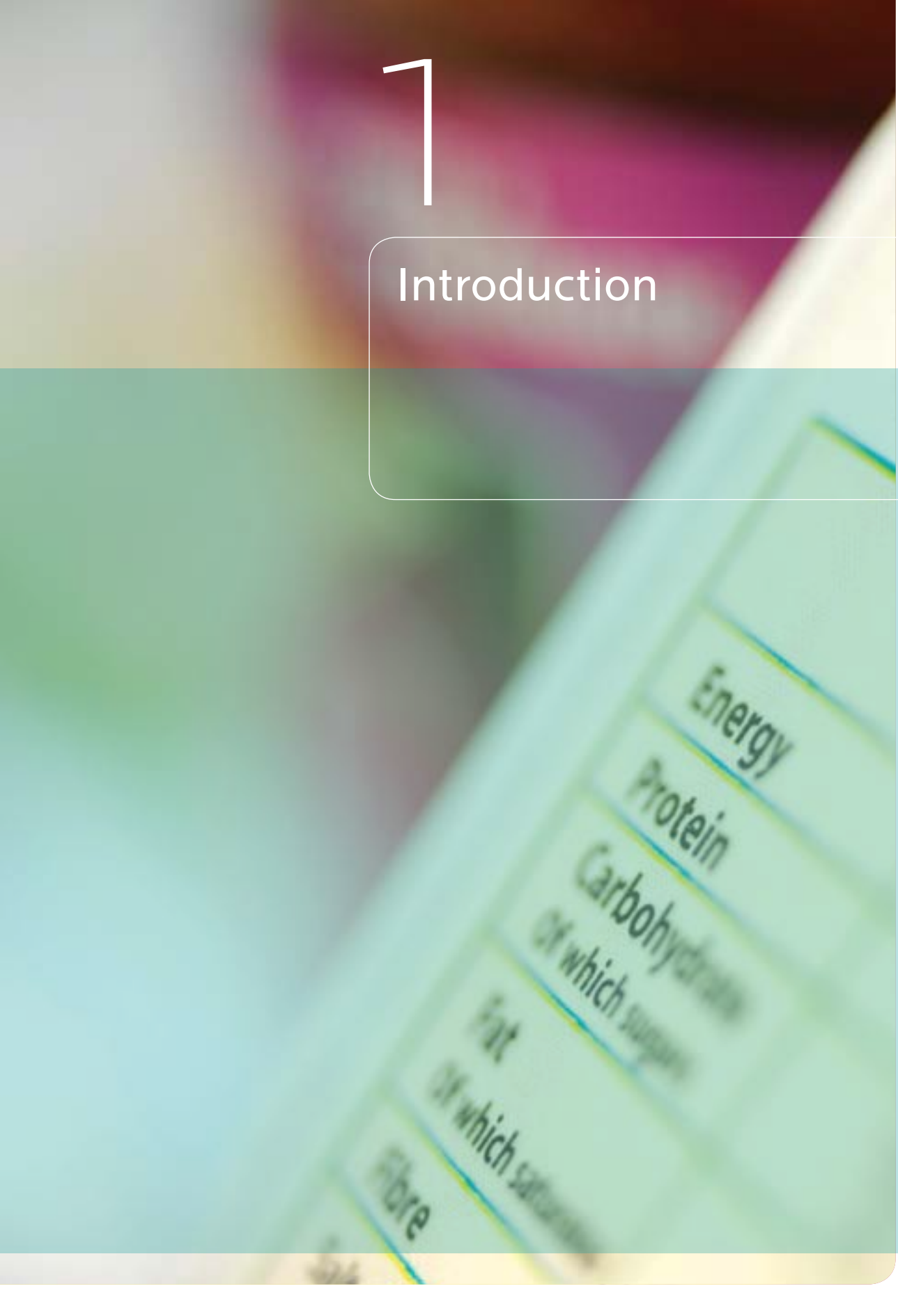
Recommendation 60: That food standards always be drafted with the understanding that they are intended to be enforceable legal documents. Where current deficiencies in the labelling requirements have been identified, standards should be re-drafted to make the obligations clear.

Recommendation 61: That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the *Food Standards Australia New Zealand Act 1991* to undertake the functions as specified in this Report and more generally to:

a. be the primary contact for, and source of, food labelling information and advice;
b. undertake research into food labelling issues;
c. undertake a general educational role in relation to food labelling issues and requirements;
d. assist industry to comply with labelling requirements;
e. act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;
f. monitor and report on food labelling compliance; and
g. monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.

1

Introduction



1

Introduction

Food and Society

1.1 A review of the role of food labelling in Australia and New Zealand needs to commence with consideration of the broad and changing role of food in modern society. The label on a food cannot hope to capture fully the multiple expectations being placed on it by society, yet efforts should be made to seek to meet these expectations to the fullest extent that is practically possible.

1.2 Food is a complex element of human existence. Rather than being merely a source of sustenance, it has individual, social and cultural functions and meanings that are intricately embedded in people's lives. Social and cultural factors strongly influence the foods that people classify as 'good' or 'bad' in terms of safety, healthiness and taste. The consumption of food is linked to expressions of family and community connectedness, beliefs related to health and wellbeing, perceptions of appropriate ways to celebrate and reward, and as a means of coping with stress and boredom. People can seek confirmation of these meanings, beliefs and perceptions when they read labels and select their food.

1.3 As people became less engaged in growing and preparing their own foods, they became more dependent on manufactured, prepared and purchased foods. Recent decades have seen pronounced changes in social structures, which have furthered this dependence. An increase in two-income households, accompanied by the continued dominant role of women in domestic tasks, has resulted in greater time poverty for those most typically involved in food preparation. This in turn has resulted in a growing reliance on convenience foods. The food industry has responded by developing new and modified products across many product categories to meet this growing demand for processed and prepared foods. As noted by one commentator, 'The supermarkets brim with produce summoned from every corner of the globe, a steady stream of novel food products ... crowd the middle aisles, and in the freezer case you can find "home meal replacements" in every conceivable ethnic stripe, demanding nothing more of the eater than opening the package and waiting for the microwave to chirp'.[1]

1.4 Trends relating to consumers' changing attitudes to food should also be noted. Numerous 'food movements' have evolved in recent years: the slow food movement; the school canteen reformers; the 'locavores' — that is, those committed to eating as much locally produced food as possible (hence the growing popularity of farmers' markets); the organic food movement; the campaign for animal welfare; the fair trade in food movement; and those opposed to particular technological developments in food production. Consumers involved in each of these trends seek food

label information that reflects their philosophical positions. However, some like the locavores can be apprehensive about regulatory burdens on small producers.

1.5 Food also has substantial economic, environmental and technological aspects that further add to expectations regarding the role of food labels. Agricultural and taxation policies can affect product prices, which in turn can influence food demand patterns across the sector. Food production and transportation methods have implications for the environment and are an increasing area of focus for both producers and governments. Concerns about these issues are also reflected in consumer demands for eco-labelling of foods. Technological developments are enabling food producers to increase yields, reduce production costs and accommodate consumers' changing preferences, but at the same time raise community concerns that are reflected in demands for technology disclosures on food labels.

1.6 Food is a major contributor to health, but also to illness through food-borne pathogens and diet-related chronic disease. While governments have long been concerned with food safety, in recent years they have become increasingly focused on the link between food and long-term health. This reflects not only their role in assisting citizens to lead healthy lives and minimise risks of chronic illnesses, but is also a reaction to increasing health care costs.

1.7 Governments act to protect and promote public health and food safety, but are also mindful that regulatory and other government decisions that affect the food industry can have major impacts on the economy. Hence governments aim to achieve effective regulation while enabling industries to remain competitive and containing the costs of ensuring compliance. Government requirements need to consider possible impacts on employment levels, regional and rural viability, and the cost of food in low income areas.

1.8 The food industry, from farm through processing to the supermarket trolley, is one of the largest and perhaps the most indispensable of industries in our society. In recent decades there has been a substantial increase in the concentration in the food processing, marketing and retailing industries. This has been accompanied by a substantial increase in expenditure on advertising by food companies in recent decades. In so doing, the food industry influences consumers' preferences.[2] As noted by Michelle Obama in campaigning to improve the USA's food supply, the food industry 'doesn't just respond to people's natural inclinations — it also actually helps to shape them'.[3] Marketing often relies on linking the audio and visual messages to text and images on the food label to increase product recognition and familiarity at the point of sale.

1.9 Added to these complexities are political and environmental challenges that require government responses. Any country is vulnerable if it is not food secure. Natural disasters, climate change and political instability can contribute to domestic and international food insecurity. The need to consider human impacts on environmental sustainability broadly, and of food production and consumption patterns in particular, has ramifications for agricultural practices and people's food choices and nutrition.[4] Demands for more organic and water-conscious agricultural practices, less reliance on fossil fuels, less food waste and more environmentally responsible eating patterns are gaining momentum.

1.10 The challenge for government is to negotiate a path through the maze of demands, intervening where necessary, encouraging where possible responsive and responsible markets and seeking to enhance individual decision making. It is clear that the food system is changing and the food label with it. Establishing a sustainable food economy in a food secure country requires recognition of philosophical positions, such as acknowledging the role of food in health and wellbeing, as well as giving attention to 'some of the "softer" social values such as trust, authenticity, ethics, democratic discussion and social innovation'.[5] The food label thus needs to convey multiple messages that reflect governments' and industries' strategies to distil the complexity of the contemporary food supply into clear information signals for consumers. This facilitates consumers' decision making regarding the best food choices to match their health concerns and social values within particular budgetary parameters.

1.11 The food label provides information to differentiate products and proclaim the benefits of the food within people's busy lives. Consumer knowledge of and trust in the food system is conveyed and reinforced via the food label. This places a large burden on food labels to convey in a readily understandable manner an extensive range of information about the foods on which they are located. Labels are a key communication link between food growers, manufacturers, health professionals, governments and communities.

International Obligations

1.12 National food labelling laws exist within a complex network of international conventions and agreements that impose obligations on the countries that have signed up to them. The most important instruments in this international framework are firstly those presided over by the World Trade Organization (WTO) — namely the General Agreement on Tariffs and Trade (GATT) and a series of more specific follow-up agreements. Secondly, a number of international standards with relevance to food labelling are set by bodies outside the WTO, the most important of which is the Codex Alimentarius Commission (the Codex Commission). Finally, there is the

World Health Organization (WHO) *Global Strategy on Diet, Physical Activity and Health* (the WHO Global Strategy).

1.13 In summary, the WTO agreements set down the international trading rules and the international standards have to be addressed in accordance with the relevant agreements. The WHO Global Strategy, while not imposing specific obligations as do the other instruments, creates an agenda of expectations for national actions in the field of diet, exercise and health.

Explanatory Box 1:
The World Trade Organization (WTO)

The WTO provides a forum for negotiating agreements aimed at reducing obstacles to international trade and ensuring a level playing field for all, thus contributing to economic growth and development. The WTO also provides a legal and institutional framework for the implementation and monitoring of these agreements, as well as for settling disputes arising from their interpretation and application.

1.14 The WTO arrangements were created to promote international trade, reduce trade barriers and impose obligations on all signatories (see Explanatory Box 1). These apply to all obligations that affect international trade, including food labelling requirements. However, the requirement to facilitate international trade is not absolute and there are exceptions in the GATT and follow-up agreements which allow countries to adopt and enforce measures necessary to protect public morals and/or protect human, animal or plant life and health and/or to prevent deceptive practices. This is subject to the proviso that such measures are not to be applied in a manner which amounts to 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail or [amount to] a disguised restriction on international trade'.[6]

1.15 Many of these exceptions are further spelt out in the other agreements under the WTO banner. The Agreement on Rules of Origin (RO) seeks to ensure that country-of-origin requirements do not restrict, distort or disrupt international trade and are applied without discrimination across countries on a consistent, uniform and impartial basis. The Agreement of the Application of Sanitary and Phytosanitary Measures (SPS), and the Agreement on Technical Barriers to Trade (TBT), allow countries to impose requirements on international trade if this is necessary for the protection of human, animal or plant life or health. In both, there are obligations against actions that are more trade restrictive than necessary to ensure the purpose of the burden or to achieve a legitimate objective. Both the SPS and to a more limited extent the TBT require reliance on scientific principles to justify any measures affecting international trade. These principles are found in international standards, guidelines and recommendations.

1.16 The *Codex Alimentarius* (the Codex) is supervised by the Codex Commission, which is responsible to the WHO and the Food and Agriculture Organization (FAO). The Codex Commission's primary purposes are to protect the health of consumers, ensure fair trading practices in the food trade and promote the coordination of international food standards. The Codex has become a highly significant influence on global food law and is also important in settlement of WTO disputes (domestic standards which comply with the Codex are more likely to comply with WTO expectations).

1.17 The standards, guidelines and codes of practice for foods, food safety and hygiene, contaminants and residues, as set out in the Codex, cover a wide field of food regulation. There are a number of standards and guidelines devoted to aspects of labelling (see Explanatory Box 2).

Explanatory Box 2: Codex Alimentarius and Labelling Provisions

- Guidelines for the Use of Nutrition and Health Claims
- General Guidelines for Use of the Term Halal
- General Standard for the Labelling of Prepackaged Foods
- General Standard for the Labelling of Food Additives when sold as such
- Standard for Labelling of and Claims for Prepackaged Foods for Special Dietary Use
- Standard for Labelling of and Claims for Foods for Special Medical Purposes
- Guidelines on Nutrition Labelling
- Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.

1.18 The 2004 WHO Global Strategy was designed to encourage member states to develop preventative health strategies aimed at both individuals and populations. Unlike the Codex, which provides a series of specific obligations relevant to food standards, the WHO Global Strategy sets out a broad agenda for action with the expectation that member states will deploy legislation where necessary. More specifically, the Strategy recommends that governments provide coordinated and multifaceted public education about healthy diets, physical activity and health, and collaborate with non-government organisations (NGOs) and the media to deliver these messages. Governments are also responsible for ensuring that consumers are provided with key nutritional information on food labels, as proposed in the *Codex Guidelines for Nutrition Labelling*, and have a role in preventing the use of misleading health claims by food manufacturers. The Strategy also articulates the role of government in the provision of adult education programs with a focus on health literacy, particularly for vulnerable sectors of the population.[7]

1.19 This complex of international standards and obligations permits national flexibility, provided that any national regulations that might impact on international trade are applied uniformly to local and imported products alike, are based on legitimate reasons drawn from the various international treaties and are justifiable and proportionate to the compliance burden they

create for international trade. The international rules recognise the right of countries to preserve human, animal and plant health and to pursue legitimate goals such as the protection of consumers against deceptive practices. Good scientific evidence should be available to justify any burden on international trade and controls based on an international standard (notably the Codex) will strengthen the argument that the burden is justified and not in breach of WTO rules. Caution always needs to be exercised when imposing mandatory requirements that might burden international trade, particularly if it is based simply on the 'consumer's right to know'. What might be seen by many in the community as a legitimate control may have the effect of raising WTO concerns.

1.20 Some of the more vexed issues considered during the Review are similarly controversial in the international arena. There is no agreement in the Codex Commission on a labelling mechanism for conveying information on the method of production, a particular current case being the labelling of genetically modified (GM) food. It is important too to note that in recent years the Codex Commission has been struggling with the issues of how and to what extent to implement the WHO Global Strategy. This challenge involves broadening the Codex from its focus on food safety to concerns with preventative health and health promotion.

Trans-Tasman Food Policies and Structures

1.21 In Australia and New Zealand, food labels are covered by a range of laws and policies. At a general level, consumer protection laws require product information, including for foods, to be truthful and not misleading. Food laws cover a more specific range of food issues including labelling requirements. Labelling requirements include those relating to the content of the food, health and safety, representation of the food and in some cases how this information is to be presented. These laws and policies are administered within a variety of government structures and it is important to understand the responsibilities of these structures and how they operate.

1.22 Australia and New Zealand in general share a common approach to food standards, a common Food Standards Code (the Code)* and a common body to determine food standards. These arrangements reflect a commitment to a seamless trans-Tasman food policy and both governments are strongly committed to the closer integration of the two markets, including overcoming unnecessary regulatory impediments to trans-Tasman business. They are part of a move towards a general uniformity of standards supported by the Trans-Tasman Mutual Recognition Arrangement (TTMRA) (see Explanatory Box 3).

Explanatory Box 3: The Trans-Tasman Mutual Recognition Arrangement (TTMRA)

The TTMRA (1996) is an agreement between the Australian Commonwealth, States and Territories and New Zealand. It is designed to 'remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand and to ... facilitate trade between the two countries'. In doing so, it implements mutual recognition principles for goods (including food, but not therapeutics) and occupations. In essence, if a food satisfies the requirements of one jurisdiction and can be sold there, it can also be sold in any other jurisdiction.

1.23 The Australian jurisdictions have an agreed national system for food regulation. New Zealand joined this system under conditions that are set out in the Treaty (Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System 2002). The food regulation system is overseen by the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council), which has responsibility for developing domestic food regulation policy and the promotion of a consistent approach to the implementation and enforcement of food standards. The Ministerial Council is supported by the Food Regulation Standing Committee (FRSC), which coordinates policy advice. The *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) establishes Food Standards Australia New Zealand (FSANZ) as an independent statutory authority with responsibility for developing food standards. Agreed standards are placed in the Code. The Implementation Sub-Committee (ISC) of FRSC develops and oversees the consistent approach to implementation and enforcement of these standards (refer Figure 1).

* The following matters are excluded from the joint system: maximum residue limits for agricultural and veterinary chemicals in food, food hygiene provisions and export requirements relating to third country trade. Australia and New Zealand each have separate standards for these.

Figure 1: The Food Regulatory System

The Food Regulation System is supported by complementary general consumer protection provisions relating to misleading or deceptive representations.

AUSTRALIAN AND NEW ZEALAND CONSUMER PROTECTION AGENCIES

Fair trading consumer protection provisions relating to misleading or deceptive representations.

Source: Image adapted from Food Regulation System — Australia and New Zealand (Brochure).

1.24 Under the Treaty, New Zealand is able to opt out of any standard that is to be included in the Code if New Zealand considers that it is inappropriate on prescribed grounds. The most significant exercise of this option relating to labelling was New Zealand opting out of mandatory country-of-origin requirements. Another distinction that should be noted between Australia and New Zealand is the somewhat different regulatory boundary between food and medicines arising from the separate category of dietary supplements in New Zealand legislation.

1.25 Each country has its own border control regime. In Australia it is the Australian Quarantine Inspection Service (AQIS) and Australian Customs and Border Protection Service, and in New Zealand the border agencies include the Ministry of Agriculture and Forestry (MAF), Biosecurity New Zealand and the New Zealand Customs Service. Among the tasks of these bodies is responsibility for checking compliance with domestic standards. The TTMRA provides for the mutual recognition by one country of the standards applying in the other. This means that most goods imported from third countries that comply with standards applying in one partner country (and have cleared the border of that country) can be exported to the other partner country.

1.26 A range of different structures at all levels of government share responsibilities for food labels, from setting the laws and regulations through to ensuring their implementation. In some instances, government entities may overlap in their responsibilities and roles. The major difference in these structures between the trans-Tasman partners arises from the contrast between the unitary nature of New Zealand and the federal nature of Australia. Both countries are, of course, subject to international treaties and obligations.

1.27 The Code provides a set of specific and generally mandatory requirements whose enforcement is embodied in national and state food acts. Since New Zealand is a unitary jurisdiction, the enforcement of the Code is empowered under a single national act, the New Zealand *Food Act 1981**, that operates across the whole country and is administered nationally by the New Zealand Food Safety Authority (NZFSA). By contrast, in Australia there are eight separate state and territory food acts and the associated instrumentalities operate in somewhat different ways in each of the eight jurisdictions.

1.28 In addition, there is complementary support for food standards deriving from the general fair trading provisions relating to misleading or deceptive representations. In unitary New Zealand, consumer protections are based on national legislation (New Zealand *Fair Trading Act 1986*) and monitored and enforced by a single national body, the New Zealand Commerce Commission (NZCC). In Australia, there is national consumer protection legislation (*Competition and Consumer Act 2010*) monitored by the

* A new Food Act (Food Bill 2010) was introduced into the New Zealand Parliament in 2010.

Australian Competition and Consumer Commission (ACCC), plus state and territory consumer protection provisions monitored by particular state and territory consumer protection agencies.

1.29 These requirements are quite separate from the Code. A label might satisfy the Code and still be misleading in some other respect (such as an assertion that the food has been organically produced). Alternatively, the label might be in breach of the Code and not be misleading (such as where a manufacturer or importer's address has not been included).

1.30 The consumer protection provisions are important additional safeguards to ensure labels convey accurate information. They provide an important way of ensuring that labelling is accurate and informative, particularly in areas not covered by the Code, such as consumer values issues, which also shape the purchasing choices of many people.

The Food Label

Explanatory Box 4: The Scope of Food Labelling

For the purposes of this Review, the term 'food labelling' includes information, representations and claims about food that are, or could be, regulated under the Australia and New Zealand Food Standards Code or consumer protection laws.

(Source: The Review terms of reference.)

1.31 It is easy to become absorbed in the elaborate international and national structures relating to food labelling and neglect the humble label itself. Yet it is the label which is the focus of this Review. Humble as it may be, the food label is also ubiquitous (see Explanatory Box 4). All packaged foods (with a few exceptions) require labelling, although requirements are minimal for some simple packaged foods. The exemptions 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 food packaged and delivered at the customer's request.[8] Unpackaged foods are also exempt from most labelling requirements. For foods (both packaged and unpackaged) that are exempt from the requirement to bear a label, certain information must still be provided. For example, food that has been genetically modified[9] or irradiated[10] must be labelled or information be displayed on, or in connection with, display of the food; certain mandatory declarations[11] and advisory and warning statements[12] must be provided upon request or on, or in connection with, the display of the food; and some unpackaged foods — certain fruits, vegetables, seafood and pork products — require country-of-origin labelling (CoOL) in Australia.[13] Where nutrition claims are made about foods otherwise exempt from the requirement to bear a label, a Nutrition Information Panel (NIP) must be made available.

1.32 The Panel recognises that food labelling standards differ from other substantive food standards in a number of ways. Firstly, they are generic and apply across all packaged foods and some unpackaged foods. They are designed to ensure information is provided to consumers. Secondly, the food labelling standards are usually the consequence of standards set elsewhere in the Code. Labelling of additives, vitamins and processing aids derives from requirements in the Code that lay down standards for substances permitted to be added to food. Provisions in the Code set the standards for food that has been irradiated or produced using gene technology and therefore requires specific labels. In many cases, the dissatisfaction with labelling standards raised in many submissions lodged with the Panel reflects dissatisfaction with the underlying substantive food standards. For instance, concern over the labelling of food produced using gene technology reflects doubts about the adequacy of the underlying substantive standard. In other cases, dissatisfaction with the labelling of ingredients which cause reactions in sensitive individuals reflects the determination of which substances are permitted in the Code. In such cases, it has been necessary for the Panel to consider the underlying substantive standard.

1.33 Additionally, the substantive standards are derived from an evidence-based process of risk assessment and risk management, drawing on evidence obtained from a range of disciplines (toxicology, microbiology, nutrition, dietary exposure, consumer sciences and others). Labelling standards reflect this evidence base, but labelling standards also involve issues of information presentation and communication which are the remit of social sciences. Presentation issues figure prominently in this Review, though they feature rarely in the substantive food standards. This suggests the importance of communication and design skills to food labelling standards and of a broad perspective of what constitutes appropriate evidence on which to base food standards.

1.34 As noted earlier, the label on a food product is the primary communication medium between the producer/supplier and the consumer. As the food supply has evolved and become more complex and extended, so too the label has evolved to play a greater role in ‘connecting’ consumers with their food.

1.35 The way in which labels communicate with consumers is complex. There are numerous stages in the communication process, including information search, exposure, perception, understanding and use.[14] Some consumers actively read labels and engage in extensive cognitive processing of the information provided. Others glean information through accidental or unconscious exposure to label content. Consumers' knowledge, interest and backgrounds influence the extent to which they are willing and able to access and use label information.[15] As a result of this complexity, evaluating the effects of label information is difficult. Levels of exposure can differ greatly from levels of understanding or use, and changes in knowledge can occur without immediate changes in behaviour. Evaluations of label effectiveness therefore need to account for the differences that occur throughout the various communication stages, a task that is made difficult by a typical reliance on self-reporting methods in label research.[16]

1.36 While initially the label was primarily a marketing tool, enabling suppliers to differentiate their products from competitors (whether through brand name, imagery or claim), the growing complexity of the food supply chain through the 20th century led governments to mandate additional information for food labels and food suppliers to squeeze more differentiating components on to their labels. Despite significant technological advances in many aspects of the food supply chain, particularly in the areas of speed to market, convenience, shelf life, packaging and preservation, the label remains a finite space faced with an ever increasing demand to contain ever more information. It is one of the most highly valued and competitively sought after communication channels in the marketplace. As the battle for space on the label has intensified and the often competing interests of government and suppliers have come to the fore, food labelling policy has evolved in a sporadic fashion to satisfy a range of interests including protecting consumers and ensuring fair marketing.[17] The recommendations of this Report are designed to address this ad hoc approach to food labelling and provide a clear path forward.

1.37 The Panel has recognised the critical role the food label plays in being a primary interface between suppliers and consumers, while assessing the rationale for government to allocate portions of this valuable 'real estate' to ensure society's best interests are upheld. In addition to the physical printed material affixed to a food, the Panel also accepts that other label-like communication vehicles are referred to as 'labels' and both existing provisions and recommendations within this Review relate to communication options physically disconnected from the food product (such as signs/posters adjacent to the point of purchase). Furthermore, the Panel has given some attention to product names and devices which can provide ingenious means for escaping the disciplines of the food labelling provisions.

1.38 The Australian Food and Grocery Council (AFGC) has accepted as given 'the high profile food labelling has in public policy debate',[18] and this position was echoed in many submissions. The food label is the arena in which many of the most intense disputes over food take place, for the label provides the most public face for controversies over food. This pivotal role is reflected in the number of Bills on food labelling recently before the Australian Parliament.* The very accessibility of the label means that it frequently serves as the catalyst for wider food arguments. Therefore, a disciplined focus on the label will often provide a manageable gateway to these wider debates.

1.39 The Panel recognises that many of its recommendations will make demands on government and impose costs on industry that may well be transferred to consumers. Throughout, the Panel's approach has been one of responsive regulation, to seek modes of self-regulation or co-regulation where possible, but recognising that escalation to more prescriptive modes may be necessary. Many of the Panel's recommendations, after having recognised a problem, are couched in terms of 'give consideration to' to encourage stakeholders to seek cooperative solutions. Implicit, however, is that if cooperation does not eventuate, sometimes within a set time period, more prescriptive modes may need to be adopted. Again where labelling changes are recommended, the Panel advocates a generous time period to encompass the change as well as grandfathering for labels that are attached to food products that have a long shelf life.

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* Food Standards Amendment (Truth in Labelling Laws) Bill 2009; Food Standards Amendment (Truth in Labelling — Palm Oil) Bill 2010; Food Standards Amendment (Truth in Labelling — Genetically Modified Material) Bill 2010.

2

Policy Drivers of Food Labelling

Policy Drivers of Food Labelling

2.1 There are a number of ways in which the policy drivers of food labelling could be characterised. The Panel found the most useful approach was to conceive of the policy drivers as being the demands of the three principal actors in the field — consumers, industry and government. Some of these demands overlap, others are in potential conflict. These demands from consumers, industry and government constitute the policy drivers of food labelling. The crux of the Review was to address the tensions between these policy drivers and to seek to resolve them.

Consumers

2.2 Consumers demand food labelling to provide them with a range of accurate information to make informed choices. For consumers, the food label is the principal source of information at the point of sale. A 2007 FSANZ survey indicated that 84% of Australians and 81% of New Zealanders cited food labels as their main source of information about the nutritional content of foods.[19] When a food is purchased for the first time, 55% of Australians and 48% of New Zealanders reported they always or nearly always referred to the labelling information. There was a clear positive relationship between consumers' health consciousness and/or dietary concerns and the frequency with which they referred to labels.[20] Other evidence suggests that there is less engagement with the label for habitual purchases, although again individual dietary and health requirements influence consumer use of and engagement with different elements of the food label.[21] Nevertheless, the importance of the label as a source of information is acknowledged in the community, with 65% of Australians and 64% of New Zealanders strongly agreeing or agreeing with the statement 'I find some information on food labels really useful and important'.[22]

2.3 This leads to the issue of what information consumers consider important. The Panel acknowledges the enormous diversity of consumer needs for information, varying as they do with lifestyle, stages in the life cycle, socio-economic status, the presence or absence of disease, and personal values. Nevertheless, it is possible to rank the priorities in consumer demand for information from a range of survey evidence. Pre-eminence is given to food safety, narrowly defined as protection from any direct and immediate threat to health as a result of contamination, decay or potentially serious reactions to food ingredients. The best before/use by date information, which may be taken as a marker of food safety, is by far the label element most looked for when a food is purchased.[23] Other safety aspects, such as allergens and additives, are important to special segments of the population.

2.4 Ranking next is a host of consumer information demands which may be categorised as relating to 'preventative health' or 'healthy eating'. Here

the considerations are the long-term health effects of certain ingredients. Unlike food safety, the health impacts in this area are usually indirect, long term and often disputable. Again, consumers with health or dietary concerns make the most demands. These demands relate to information relevant to their specific needs, such as energy amounts and specific nutrients (e.g., carbohydrates, fibre, calcium, sugars, salt, fats, sodium, vitamins and additives). One half of the population demand information on one or more of these aspects, at least when purchasing a food for the first time.[24]

2.5 More difficult to rank are concerns over new technologies such as irradiation, genetic modification and nanotechnology. They figure as issues of only minor concern in open-ended surveys, but when prompted the levels of concern rise significantly. Moreover, issues of new technologies, particularly genetic modification of foods, figured prominently in submissions and consultations to this Review, with significance often tied to long-term health issues. As a result, the Panel has classified new technologies as a distinct driver arising from consumer demands.

2.6 Finally, there is a category of consumer demands which cannot easily be linked to either short-term or long-term health risks. These demands arise from consumers' perceptions of the world, their ethical views and their personal values. Information demands reflecting consumer values include country-of-origin labelling (CoOL), environmental issues, animal welfare and methods of production. All these are a concern to smaller proportions of consumers, except for CoOL, which, in Australia at least, has considerable salience.[25] This may arise because CoOL may serve as a surrogate for many consumers for other information demands such as carbon miles, animal welfare or even perceived food safety.

2.7 Thus the four policy drivers on food labelling originating with consumers, roughly in order of importance, are demands for information on food safety, healthy eating, new technologies and consumer values issues.

Industry

2.8 The food industry (defined as consisting of farm and fish producers, food processors and food retailers) is a major industry in both Australia and New Zealand. Food is also a major component of other industries, for example the hospitality, transport and packaging industries. The food industry makes a notable contribution to the Australian and New Zealand economies. In 2007–08, the agricultural food production and food and beverage manufacturing sectors employed more than 510,000 people in Australia[26] and more than 160,000 people in New Zealand.[27] Food retail sales were A$112.9 billion in Australia[28] and NZ$23.2 billion in New Zealand[29]. Food exports in 2007–08 were valued at A$23.3 billion[30] and NZ$19.8 billion[31] in Australia and New Zealand, respectively.

2.9 The food retailing and manufacturing sectors are highly concentrated. For example, in Australia almost 75% of total food manufacturing revenue is generated by the top 50 food and beverage corporations.[32] In the market for packaged groceries, the two largest grocery retailers hold 78% of market share.[33] In addition, there are approximately 6,000 other supermarket and grocery retailers in Australia, of whom around 73% are independent retailers.[34] This distinction is important, for the regulatory burden is disproportionately more severe on small firms.

2.10 For industry, the food label is the key marketing tool at the point of sale with which a food manufacturer hopes to persuade the consumer to purchase its goods. Indeed, for many brands the food label may be the only communication vehicle available to speak to the consumer. In order to ensure marketing flexibility, industry does not want the label to be restricted as a marketing device by unnecessary demands on space from governmentally mandated information requirements or indeed anything that might unduly inhibit the food label as a marketing device. As noted in one industry submission, 'Mandatory labelling requirements should not unnecessarily undermine the commercial viability of the product or be a de facto tool to prohibit the manufacturing and marketing of foods' [emphasis in original].[35]

2.11 Industry recognises, of course, the necessity for accurate information on food safety, at least as narrowly conceived. For one thing, industry is driven by the need to maintain consumer confidence in the safety of food. For another, failure here could prove legally costly and reputationally and commercially damaging. Industry therefore accepts the requirement for mandatory rules in this area. Industry also recognises the consumer demand for public health information more generally, as evidenced by the proliferation of industry-originated health material on labels. One submission from the food industry expressed strong support for 'providing fact-based information on all product labels, supported by effective consumer messaging and education programs, to help to empower people to select balanced and sensible diets combined with an active lifestyle'.[36] Industry prefers industry-generated/voluntary health claims rather than governmentally prescribed preventative health information. The challenge with this is that such industry-generated health information too often succumbs to marketing needs.

2.12 Finally, industry demands to be as autonomous as practicable in food labelling, viewing government regulation as impeding industry responsiveness to consumer demands. Industry argues that consumer pressures and market needs will suffice to provide reliable labelling and that a level playing field is as much in the interests of industry as consumers. Misleading, inaccurate or confusing information can deny consumers the information they need, but can also disadvantage a company playing by the rules, tilting the playing field against it. This provides an incentive for industry as a whole to organise self-regulatory models for labelling relating

to consumer values issues and general public health issues, both in response to consumer demands but also to constrain less ethical industry players.

2.13 Policy drivers of food labelling originating from industry are less easy to categorise than those from consumers. However, the chief drivers are the demand for assurance of marketing flexibility for the label; a recognition of the necessity of mandated food safety requirements to maintain both confidence in the food supply and to preserve industry's reputation; a preference for industry-generated health claims as regards preventative health; and as much autonomy in labelling as possible, relying on market disciplines to provide effective and responsive labelling.

Government

2.14 The third and most critical actor is government. It has its own demands as regards food labelling, but as the authoritative allocator of values in a society it must also respond to and arbitrate between the demands of the other actors and thus determine the variety of regulatory regimes.

2.15 Public health and safety of the population is the paramount concern for government in relation to food and food label considerations. It has long been incumbent on governments to ensure the safety of their citizens in the narrow sense of avoiding acute illness or death resulting from the consumption of unsafe food. As noted by one State government submission, 'The food regulatory system has to date focused mainly on reducing acute health risks'.[37] Food-borne illness is a significant contributor to health service costs, with an estimated 5.4 million cases of food-borne illness annually, costing approximately $1.2 billion.[38] Governments therefore demand that food labels play a protective role to ensure individuals against immediate ill effects which might result from contamination, decay or severe allergic reactions. Thus the first driver of food labelling policy originating with government is the demand that the label be utilised to secure the immediate safety of consumers.

2.16 Increasingly in the developed world and in response to epidemiological studies, governments have also accepted a broader public health role that focuses on the longer term health of individuals, subpopulations and the population as a whole. The submission from the South Australian Government noted that: 'Historically food regulation has recognised the paramount role of preventing acute illness and exposure to compounds used in food production and processing. However the burden of chronic disease is such that the food regulatory system must now also consider its broader role in reducing the risk of chronic diet-related disease and assisting consumers to prevent and manage such conditions.'[39] It has been estimated that obesity alone affects 3.8 million Australians at an annual cost of $58 billion.[40] Healthcare expenditure on the lifestyle-related conditions of cardiovascular disease, diabetes and cancer is expected to increase from a combined total

of $14.4 billion in 2002–03 to $41.3 billion in 2032–33.[41] As the population ages, the issue of chronic illness and its management will increase.

2.17 Thus, government's task has expanded beyond protecting the immediate health of individuals to sustaining and improving the health of the population. One purpose of the WHO Global Strategy is to encourage national government action in this field. An obvious example of governmental response to these broadening public health functions was the actions taken in relation to tobacco labelling, given the overwhelming epidemiological evidence provided by studies of the link between tobacco usage and a range of chronic diseases. Communities now expect and support the government in providing leadership and stewardship in public health and food safety.

2.18 Given these expectations and the acceptance by governments of these broader responsibilities, growing attention has been given to food, the food supply and food labelling within the context of population health. The Preventative Health Taskforce recommended 'driv[ing] change within the food supply to increase the availability and demand for healthier food products and decrease the availability and demand for unhealthy food products'.[42] It made specific mention of labelling, urging governments to 'enhance food labelling by introducing a national system of food labelling to support healthier choices ...[that] would apply to food for retail sale as well as on food purchased when eating out, and be available in settings such as restaurants, food halls and takeaway shops'.[43] Thus a second driver of food labelling, originating with government, is its responsibility for population health.

2.19 While food safety and preventative health are clearly key drivers for government in relation to food labelling, a common theme in many submissions was a concern that FSANZ was overly concerned with food safety, without an appropriate focus on broader public health issues. A definition of public health in the FSANZ Act would decrease ambiguity regarding the role of the regulator in developing and reviewing food standards. It would also assist in assuring that the work of FSANZ is consistent with and complementary to the roles of other key public health agencies within the Australian and New Zealand governments. In considering the adoption of a definition of public health within the FSANZ Act, it is important to ensure that food label requirements do not increase social and economic inequalities in health that may already exist in the population. The definition of public health which encompasses food safety, suggested by the National Public Health Partnership and identified in the Ministerial Council's *Overarching Strategic Statement for the Food Regulatory System,* is appropriate: 'Public Health is defined as "the organised response by society to protect and promote health, and to prevent injury, illness and disability"'.[44]

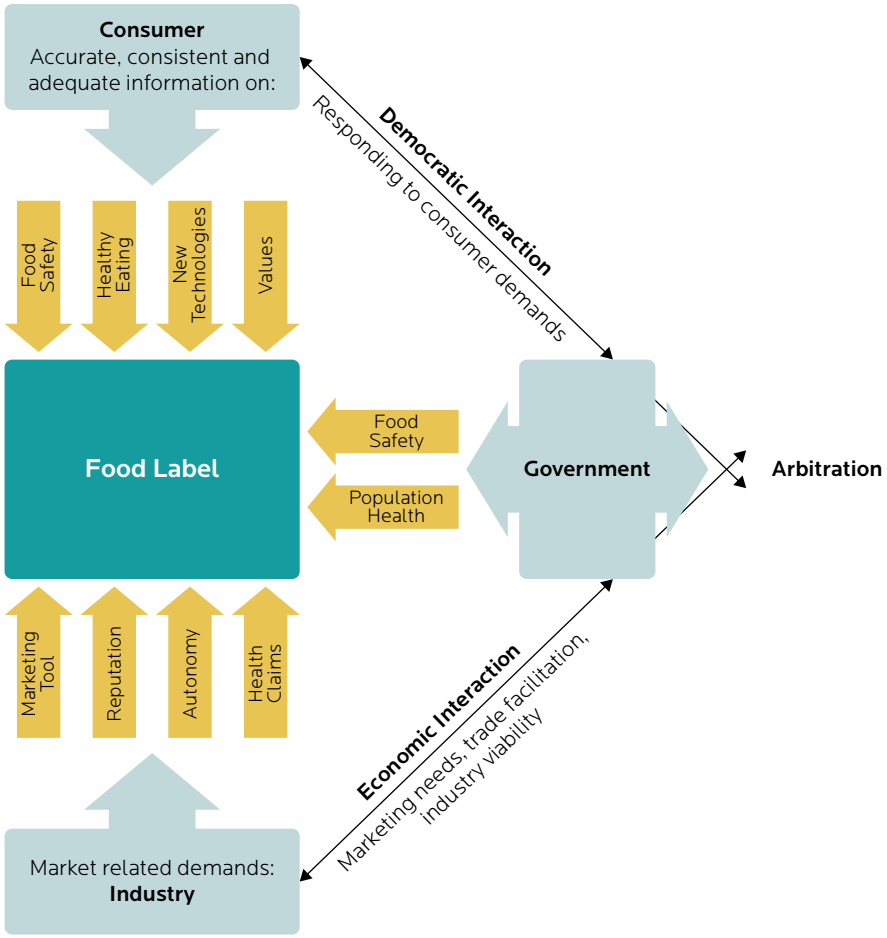
Recommendation 1:
That the *Food Standards Australia New Zealand Act 1991* be amended to include a definition of public health to the effect that: 'Public Health is the organised response by society to protect and promote health, and to prevent illness, injury and disability'.

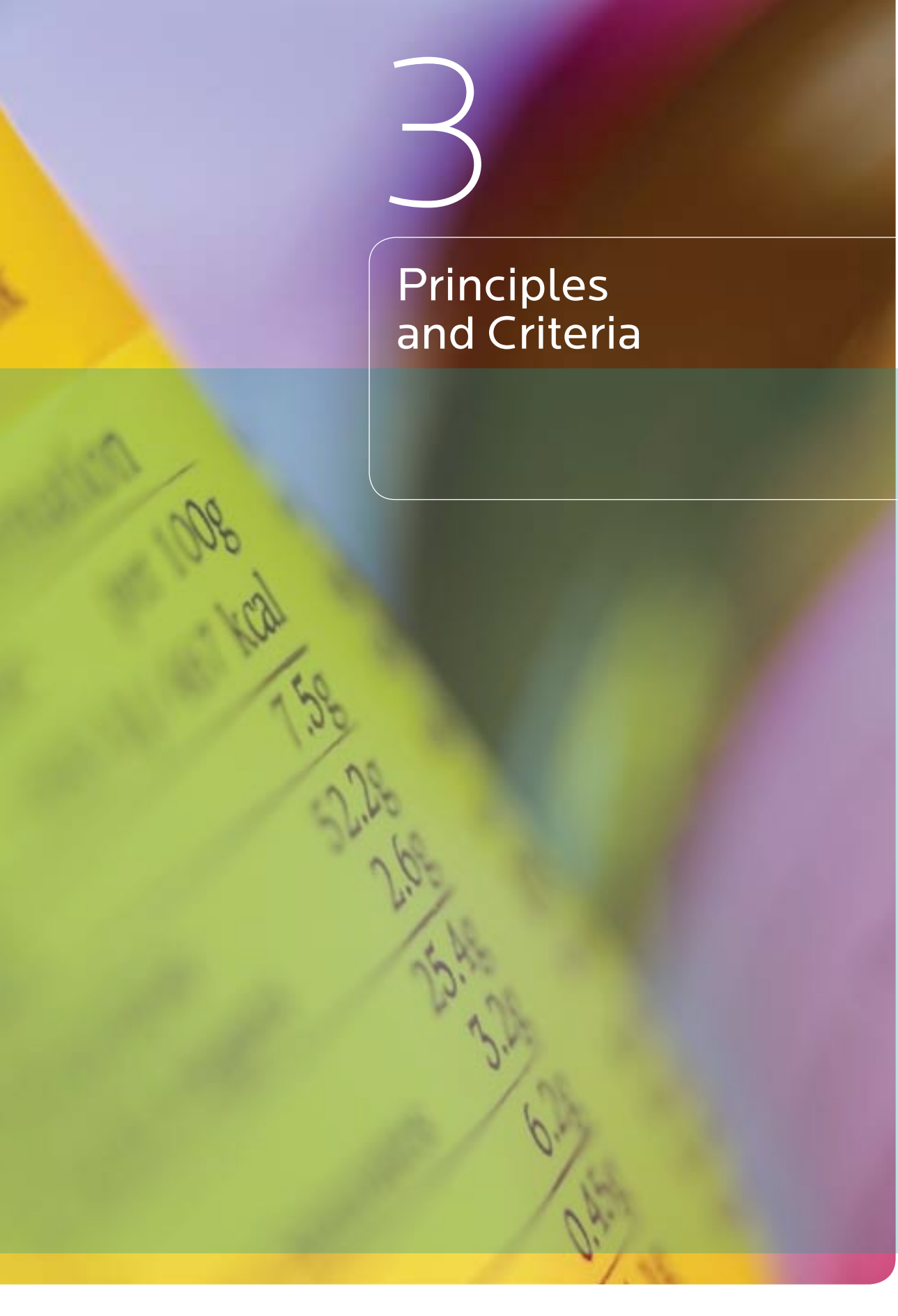
2.20 In relation to its role as arbitrator between the demands of consumers and industry in relation to food labels, a democratic government needs to be responsive to the demands of its citizens. At the same time, it must respond to the needs of industry to ensure market viability and trade facilitation. It must take into account coherent cases for the inclusion of particular items of consumer information on food labels. In considering these consumer demands, governments should ensure effective regulation that does not unnecessarily impede industry competitiveness or unnecessarily increase the costs of compliance, recognising that these costs may ultimately be borne by the community.

2.21 Government also has the ultimate responsibility for ensuring a level playing field in which consumers are provided with accurate labelling to inform their food choices and companies are not disadvantaged by competitors seeking advantage through misleading or exaggerated information. The playing field will only be level for consumers if the food label provides information that is accurate, consistent and adequate for the exercise of consumer choice. The playing field will only be level for businesses if all are equally constrained to provide accurate, consistent and adequate information on the food label.

2.22 Thus government has two quite distinct tasks as regards to food labelling. Firstly, there are the drivers or the demands that government itself places on the food labelling system to guarantee food safety, provide incentives for healthy eating and encourage population health. Secondly, it has the unique role of arbitrator required to balance in terms of the national interest the potentially competing drivers from consumers, from industry and from itself.

Figure 2: Policy Drivers of Food Labelling





3

Principles and Criteria

Principles and Criteria

3.1 The Panel was asked to provide principles and criteria which should guide decisions about government regulatory intervention in food labelling. A general set of guiding principles for the Panel was provided by the objectives laid down for Food Standards Australia New Zealand (FSANZ) in section 18 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). These are in descending priority order:

a. the protection of public health and safety; and

b. the provision of adequate information relating to food to enable consumers to make informed choices; and

c. the prevention of misleading or deceptive conduct.

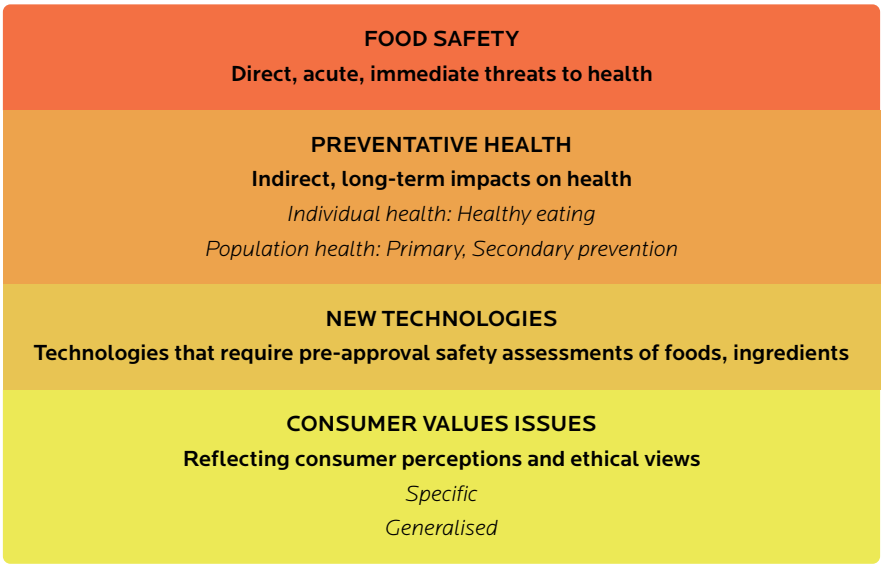
While these objectives are important as a general template, an approach that applies with more discrimination to all stakeholders involved with food labelling is required. Noting that the Panel has already recommended the need for a definition of public health in the FSANZ Act, the Panel further recommends a more precise set of principles and criteria to guide decisions about government intervention in food labelling.

A Food Labelling Hierarchy

3.2 The Panel suggests that a consideration of the policy drivers identified in the previous chapter — consumers' need for information; industry's need for marketing flexibility and minimal regulatory burdens; and governmental objectives in the area of individual and population health — provides a framework for deriving principles for intervention by governments in order to steer the flow of labelling events.

3.3 Figure 3 sets out a food labelling hierarchy ranging from food safety at the top, through preventative health and new technologies to consumer values issues, specific and generalised, at the bottom. Insofar as the concern is over what people ingest, the demands at the top of the table are the most important. For most people, threats to their health or wellbeing are likely to loom larger than environmental or animal welfare concerns. This hierarchy tends to reflect popular attitudes to food labelling: majorities stress labelling issues on the top, smaller proportions of the population are concerned with issues on the bottom (with the exception, noted earlier, of CoOL). In the FSANZ *Consumer Attitudes Survey 2007*, 70% of respondents favoured high levels of regulation for food safety and 50% favoured high levels of regulation for management of public health issues.[45] This hierarchy also reflects the evidential base which is relatively straightforward as regards food safety, more elaborate and arguable as regards preventative health and new technologies and frequently more complex and disputed as regards consumer values issues.

Figure 3: Food Labelling Hierarchy



3.4 Food safety is relatively straightforward and requires little explanation. Labelling is required here to protect consumers from direct and immediate threats to their health. As noted by a government submission, 'It is imperative that consumers are provided with the information they need to determine whether a product is safe for them to eat'.[46]

3.5 Preventative health is more complex and the Panel has identified two aspects related to labelling. Firstly, labelling directed at individual consumers, providing information to assist them to take responsibility for their own health. Secondly, labelling directed at the overall health of populations, where label information is one element of a range of strategies that make healthy choices easier for the majority of a population. A population-wide approach may focus on primary prevention (directed at maintaining the health of the whole population) or on secondary prevention (directed at population sub-groups with incipient or developed chronic diseases or conditions).

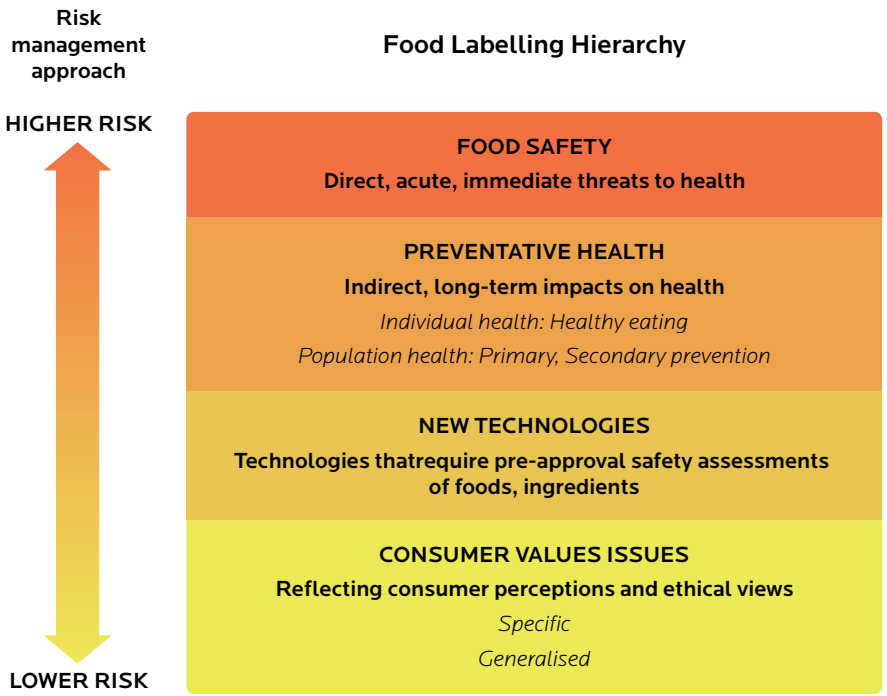
3.6 New technologies raise distinctive labelling issues arising from the fact that unique ingredients and foods produced or treated by major new technologies are automatically, because of the technological process, required to have pre-approval safety assessments. Given that there are likely to be increasing challenges to policy makers in coming years as a result of further technological innovations in food production, the Panel seeks a distinctive labelling protocol with regard to new technologies.

3.7 Consumer values issues embrace a range of personal values, perceptions and convictions that consumers bring to their food purchasing decisions. Objectively they relate to non-health information, though the Panel does not

deny that many consumers read health implications into these values issues. The Panel has found it useful to distinguish between narrow consumer values issues linked explicitly to methods of food production, such as organic, free range, halal and kosher, and broader, more generic values, such as human rights, environmental sustainability and animal welfare.

3.8 The proposed hierarchy provides a basic guide to an overall food labelling policy and can guide current and future labelling interventions. Firstly, it is broadly in descending order a risk hierarchy (refer Figure 4) — those concerns at the top posing potentially the greater risks to health, those at the bottom the least risk. With food safety the risk is direct, acute and short term, and can relate to a single product or batch of products at a single point of time. With preventative health the concerns are primarily with the cumulative impact of certain nutrients and foods and the risk is less direct and often longer term in nature. With new technologies the risks are assessed through a formal risk assessment process. For most consumer values issues, the risks to human health are minimal or non-existent.

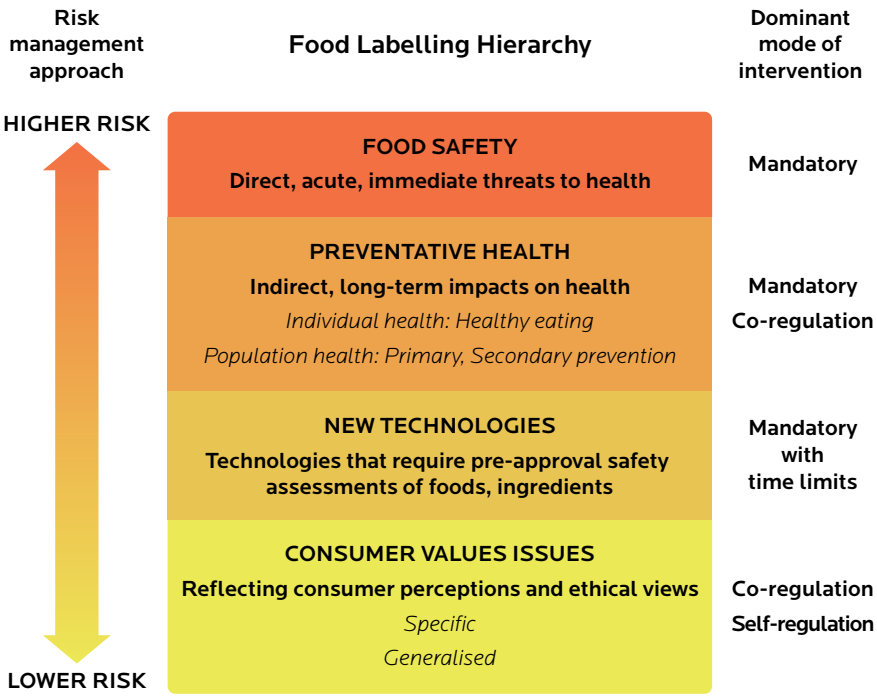
Figure 4: Food Labelling Risk Hierarchy



3.9 This risk assessment in turn directs attention to a regulatory hierarchy where, as one jurisdiction put it: 'The greater the level of risk to public health the greater the need should be for Government regulation' [emphasis in original].[47] The extent to which the provision of information is mandated versus provided on a self-regulatory basis should reflect the significance

of the public health concerns. This approach is consistent with the position of the Taskforce on Industry Self-Regulation that 'self-regulation should [only] be considered where ... there is no strong public interest concern, in particular, no major public health and safety concern [and] ... the problem is a low risk event, of low impact/significance'.[48] Thus the Panel's focus on self-regulatory measures tends to be confined to the lower end of the table (refer Figure 5).

Figure 5: Food Labelling Regulatory Hierarchy

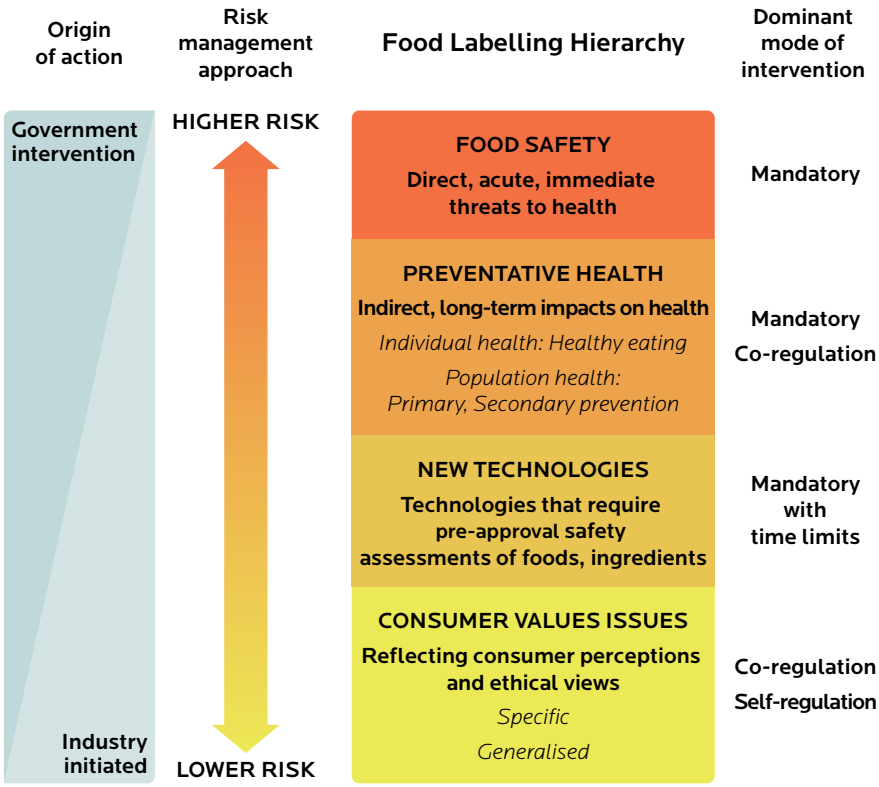


3.10 Prescriptive responses will tend to be dominant at the upper (food safety) level. Here it is not possible to escape mandatory rules. A mixture of prescription, co-regulation and mandated rules with time limits will be characteristic of the middle sections. At the preventative health level, the choice will usually be between mandatory requirements or co-regulation, the essence of co-regulation being that regulatory responsibility is a collaboration between industry and government. But the Panel would not rule out entirely the possibility of industry-initiated self-regulatory measures designed to supplement or support the dominant mandatory or co-regulatory regimes/responses. The choice will very much depend on the nature of the particular preventative health measure and past experience of handling it. Time-limited mandatory rules are recommended for new technologies so that the appropriateness of the mandatory rules can be assessed over time on the basis of the experience with the technology. More

flexible, participatory and devolved forms of intervention should apply to consumer values issues. Overall, the balance between the varying modes of intervention will in specific cases be dependent on the evidence of the need for action and on the assessment of the effectiveness of any proposed action. The whole system is envisaged as one of responsive intervention so that if softer measures fail there would be opportunity for escalation to more regulatory modes.

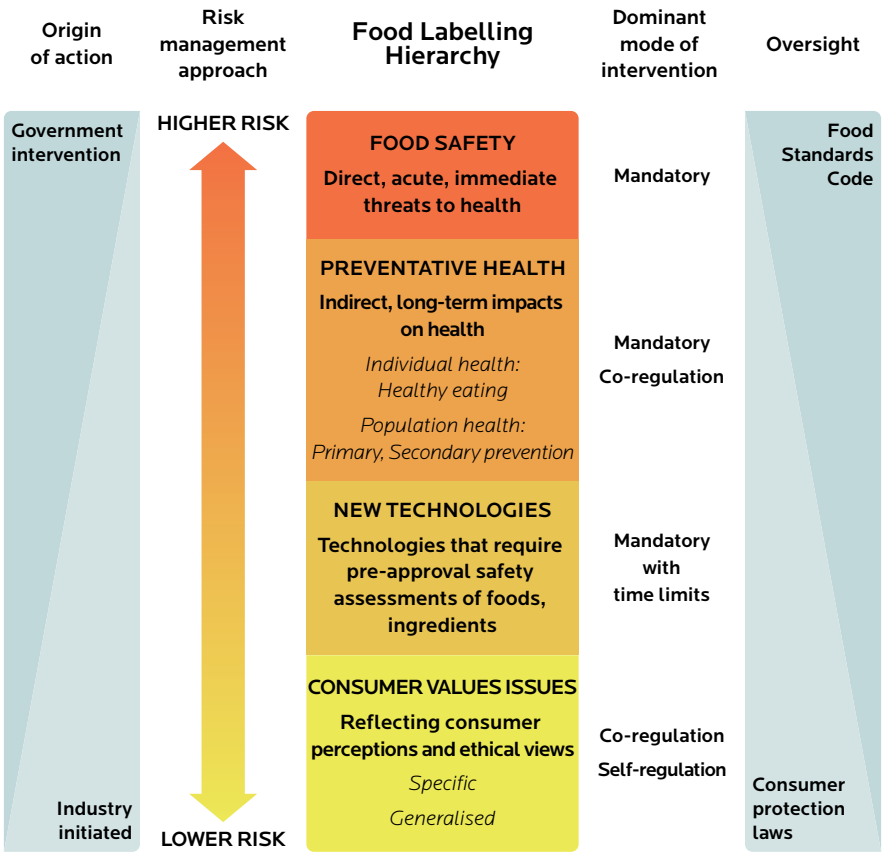
3.11 These modes of intervention are in turn indicative of where the actions originate. Mandatory rules, with or without time limits, and co-regulation will nearly always originate with government, although at times the initiative for a co-regulatory mode may come from industry seeking collaboration with government. By contrast, the various self-regulatory mechanisms, characteristic of the consumer values issues area, will nearly always be initiated by industry or other non-government bodies (refer Figure 6).

Figure 6: Food Labelling Hierarchy: Origin of Action



3.12 Finally, the hierarchy is indicative of where rules and oversight should lie (refer Figure 7). For food safety, preventative health and new technologies, responsibility would lie with FSANZ and the State and Territory and New Zealand food authorities; for consumer values issues it would lie with the Australian Competition and Consumer Commission (ACCC) and the State and Territory fair trading bodies and the New Zealand Commerce Commission (NZCC), relying on the 'misleading or deceptive' provisions. It is possible that some specific value issues might be referenced in the Code and thus fall within the FSANZ arena.

Figure 7: Food Labelling Hierarchy: Oversight



Regulatory Implications

3.13 There is a consensus among all the major actors as to the necessity for prescriptive regulation on those aspects of the label relating to immediate food safety. One submission from the food industry noted that 'the primacy of public safety dictates clear regulation and mandatory labelling requirements where direct risks to health exist (including storage and use, allergen and ingredients labelling)'.[49] Problems with the adequacy, presentation and interpretation of these prescriptive requirements are dealt with later in this Report.

3.14 The roles of the food label in relation to preventative health are both more complex in nature and more recently considered. Preventative health encompasses the influence of individual food selections on long-term health, as well as wider population level health and food system impacts. Information on the food label should reflect and support a broadly based public health strategy. A public health approach to food label requirements thus necessitates considerations ranging from individual to population levels.

3.15 There is a consensus among all actors that consumers should be provided with at least the basic information required to facilitate healthy food choices (e.g., ingredients, nutrient levels) and that this requirement should be prescribed. The debates about the adequacy of the currently provided information and its presentation, particularly the format for and interpretation of nutrient information and the desirability of public education regarding food labels, are discussed later in this Report.

3.16 Governments' concerns relating to population health encompass both enabling individuals to make personal choices to support and promote their health and reducing population level risks of chronic disease, especially for those groups at higher risk (lower socio-economic groups bear a disproportionate burden of chronic illnesses). Mandatory health advice by governments and voluntary health claims by industry should only be considered if the epidemiological evidence is of such a high order as to substantiate general level health advice (handicapped in Australia and New Zealand by the lack of up-to-date overarching national food and nutrition policies) or to provide convincing linkages between particular diseases or conditions and particular foods or food ingredients shown to precipitate or mitigate such diseases. In both cases, strict conditions should apply for their use.

3.17 An added complexity in the area of preventative health is that the principles of best regulatory practice are unlikely to provide clear justification for mandatory labelling with reference to chronic diseases. In essence, this is because the benefits flowing from regulation depend on changed consumer behaviour. Such change will likely remain uncertain, particularly given the multitude of factors that influence consumer behaviour and the inevitable time lag between the imposition of a labelling requirement and any effects

on the chronic condition. Such uncertainty should not prevent action. As the submission from the former Victorian Government noted, 'The success of smoking reduction strategies demonstrates that the cumulative impact of multiple initiatives including regulation can, over time, result in changes in consumer behaviour and substantial gains in population health'.[50] In that particular case, an unimaginative adherence to the principles of best regulatory practice alone would have denied this society billions of dollars in health cost savings and improved health outcomes for the population.

3.18 As regards secondary prevention — that is, responses to subpopulations with incipient or developed chronic diseases — the Panel believes the further refinement of the co-regulatory labelling regime between industry and the major non-government health-related organisations is the appropriate way forward. However, that regime needs to be more transparent, subject to discipline to prevent the proliferation of endorsements, and subject to a governmental framework to ensure accuracy and consistency in terminology.

3.19 New technologies (see Explanatory Box 5 for definition) in food production have frequently raised safety concerns, hence foods or ingredients treated by irradiation or produced using gene technology are automatically required to undergo a pre-approval assessment for safety. This provides the basis for the argument for the prescriptive identification of foods or ingredients treated or produced by such technologies, at least for a designated period, at the end of which time the need for such identification should be reviewed.

Explanatory Box 5: New Technologies

For the purposes of this Review, the term 'new technologies' means technologies whose application for use in the food production chain automatically triggers a pre-market safety assessment of the foods or ingredients produced or treated by them.

3.20 Finally, as regards consumer values issues, the Panel accepts the industry argument that if significant bodies of consumers desire certain value approaches to food production, the competitive forces will typically compel producers, or at least some producers, to cater for these needs. But the Panel does not accept the consequence of this argument that this area should be left completely to self-regulation. Unless there is a governmentally supported framework of operational definitions and insistence on accurate and consistent terminology, marketing needs may corrupt the information to consumers and present a risk to the integrity of the food system. The Panel recognises also that there may be situations of market failure in the consumer values area which require mandatory regulation. Furthermore, particularly with specific consumer values issues where accurate and precise definitions are being pursued, there may be value in referencing such definitions in the Code and thereby giving them prescriptive authority. Generally with values, the Panel favours

the cooperative development of standards (possibly through Standards Australia), designated certification schemes or self-designed industry codes of practice. However, to secure consistent and accurate information and a level playing field for all players, the Panel argues that these forms of self-regulation need in many cases to be publicly monitored and that private rule enforcement should be transparent and subject to public review.

Recommendation 2:
That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.

The modes of intervention should be mandatory for food safety; a mixture of mandatory and co-regulation for preventative health, the choice dependent on government health priorities and the effectiveness or otherwise of co-regulatory measures; and mandatory with time limits for new technologies. The modes of intervention for consumer values issues should be self-regulatory but subject to more prescriptive forms of intervention in cases of market failure or the ineffectiveness of self-regulatory schemes.

3.21 Inadequate compliance and enforcement and inconsistent interpretation of the Code has been the persistent complaint of many submissions to the Panel. It is a key principle of good governance that regulations should operate predictably and purposefully and the community must feel confident that the food regulatory system designed to protect its health and safety operates effectively. As such, once the case for a labelling standard has been established and becomes part of the Code, it must be monitored and enforced by the jurisdictions with as high a priority as any other food standard. Labelling standards must also be written in a way that both clearly conveys what is required of industry and be capable of enforcement should a prosecution occur. If these things do not follow, general confidence in the food regulatory system will be seriously weakened.

Recommendation 3:
That once the case for a labelling standard has been established and becomes part of the Food Standards Code, sufficient resources be allocated to ensure that it is effectively monitored and enforced.

3.22 Similarly, consumer values issues statements if untrue can cheat purchasers and erode public confidence in the food industry. As such, misleading or deceptive labels and claims should be followed up by the consumer protection agencies of the jurisdictions. Governments also have responsibilities to take the lead in encouraging industry to self-regulate or to regulate directly to clarify terms and obligations in order to ensure that, when made, claims are accurate and meaningful. Although consumer values issues statements generally do not affect health and safety, the Panel has been made aware that many consumers feel very strongly about a range of values issues. When value statements are made on labels, these consumers rely on their accuracy and base their purchases on them. Therefore labelling for consumer values issues should be monitored and given a high priority by government.

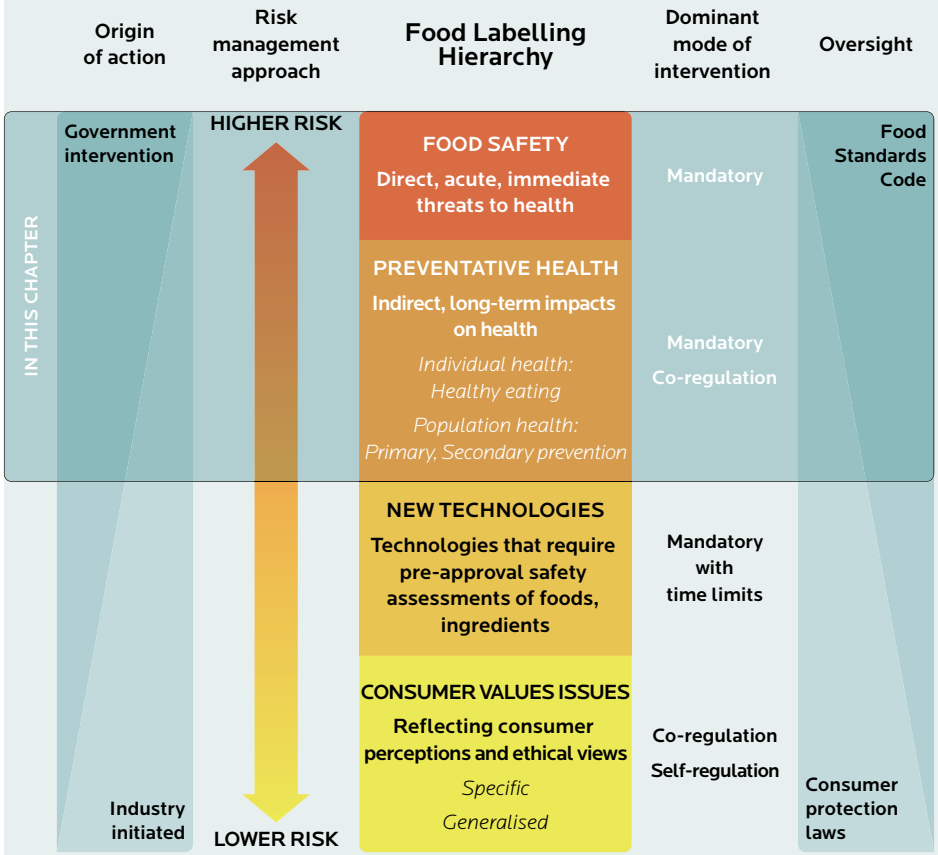
Recommendation 4:
That consumer protection concerns be accorded a high priority by the relevant government agencies and complaints be properly processed and resolved.

3.23 The principles and criteria that framed this Review resulted in a series of recommendations relating to the provision of information to consumers to assist them to optimise their food purchase and consumption decisions. The effectiveness of the recommendations in practice will be dependent on consumers' ability to notice, read and comprehend the information provided. Ensuring that all relevant information is presented appropriately to enhance consumer comprehension is thus a critical requirement for food labelling and is treated as such in this Report.

Recommendation 5:
That information on food labels be presented in a clear and comprehensible manner to enhance understanding across all levels of the population.

4

Public Health and Food Safety


Origin of action
Risk management approach
Food Labelling Hierarchy
Dominant mode of intervention
Oversight
IN THIS CHAPTER
Government intervention
HIGHER RISK
FOOD SAFETY
Direct, acute, immediate threats to health
Mandatory
Food Standards Code
PREVENTATIVE HEALTH
Indirect, long-term impacts on health
Individual health:
Healthy eating
Population health:
Primary, Secondary prevention
Mandatory
Co-regulation
NEW TECHNOLOGIES
Technologies that require pre-approval safety assessments of foods, ingredients
Mandatory with time limits
CONSUMER VALUES ISSUES
Reflecting consumer perceptions and ethical views
Specific
Generalised
Co-regulation
Self-regulation
Industry initiated
LOWER RISK
Consumer protection laws

Public Health and Food Safety

4.1 Public health and food safety are positioned at the top of the food labelling regulatory hierarchy. Food safety labelling issues relate to food choices that can affect consumers' immediate health (food-borne illness, allergies, sensitivities and alcohol-related harm). Preventative health labelling issues relate to impacts on longer term health: primary prevention aims to maximise health status and secondary prevention aims to reduce risk of chronic illness and maintain quality of life when living with chronic conditions. The primacy of these issues requires regulatory actions be initiated by government. Government regulatory intervention for issues of food safety are generally straightforward and widely supported. The role of the label to achieve preventative health goals through risk reduction, management and communication strategies has been subject to more recent consideration and debate. Government and industry initiatives both have a role to play in supporting public health goals.

Food Safety Elements

4.2 Food safety elements on the label refer to safe food handling and behaviours after the food has been purchased. A broad array of government regulations, including the Food Standards Code (the Code), act to ensure the safety of the foods purchased, as foods can only be sold if certain strict requirements have been met. For example, possible contaminants and residues in food are regulated by Part 1.4 and microbiological requirements by Part 1.6 of the Code. Thus issues raised in some submissions relating to possible chemical residues in foods for sale were not addressed in this review of food labelling.

4.3 The Panel identified that improvements could be made to the food safety elements on the food label, as confusion and misinterpretation of some of these elements were apparent in the public submissions made to the Panel. In addition, it was noted that limited evaluations have been reported of either the effectiveness of the food label to communicate food safety information to the public[51] or of maximising the effectiveness of food safety communication, including the food label.[52]

4.4 The Panel considers that the majority of food safety information on the label should be mandatory, but opportunities for industry initiatives are also noted. There are strong incentives for industry to assure their customers of the safety of their products. Such industry-initiated food safety regulatory mechanisms would be appropriate as additional to basic mandatory requirements, but should be co-regulatory with government in order to maintain consumer confidence in the important area of food safety. This is supported by the limited consumer research undertaken in relation to consumer use of food safety warning statements that found trust in such

messages was closely linked with the authorities involved and their use was considered an extension of existing regulatory powers of government.[53]

4.5 The mandatory food label elements within the Code that primarily convey food safety information to the purchaser include warning statements, use and storage instructions, identification of allergens, date marking, batch code and contact details. Date marking and use and storage instructions relate to the safe food handling of a product. The batch code of the product allows the consumer to identify an already purchased item that should not be consumed if a food safety problem has been identified (e.g., a public product recall is announced or for product traceability).

4.6 The terms for date marking are specified in *Standard 1.2.5 Date Marking of Food* in the Code. However, the specific use of the terms 'best before' and 'use by' appears not to be clearly understood by the public (see Explanatory Box 6). Some organisations have made available information about date marking (e.g., FOODcents[54] and FSANZ[55]), but the coverage or effectiveness of such education initiatives is not known.

4.7 Use and storage instructions are specified in *Standard 1.2.6 Directions for Use and Storage* in the Code. They are applicable when, for reasons of health or safety, the consumer should be informed of specific use or storage requirements. The Panel noted that limited guidance is provided in this standard with regard to the extent and format of such instruction and considers that specific attention should be given to maximising the use of the food label to convey food safety information. One example of expanded food safety information provided in the United Kingdom is provided in Explanatory Box 7.

Explanatory Box 6:
Date Marking Terms

Best before date: In relation to a package of food, means the date that signifies the end of the period during which the intact package of food, if stored in accordance with any stated storage conditions, will remain fully marketable and will retain any specific qualities for which express or implied claims have been made.

Use by date: In relation to a package of food, means the date that signifies the end of the estimated period if stored in accordance with any stated storage conditions, after which the intact package of food should not be consumed because of health and safety concerns.

Baked for, baked on: These dates may also be used on bakery items.

(Source: FSANZ, *Standard 1.2.5 Date Marking of Food*, p. 1.)

Explanatory Box 7:
Example of Expanded Food Safety Information

Storage:
Freeze on day of purchase.
Use within one month.
Defrost thoroughly before use.
Once opened use within 3 days.

Important:
The product contains raw meat and must be cooked according to the cooking instructions. When handling raw meat, ensure all surfaces, utensils and hands are thoroughly cleaned before and after use to avoid contamination of other foods. Keep raw meats separate from cooked foods, ideally at the bottom of your fridge.

[Note: Cooking instructions were also included on the packet.]

Source: Taken from a UK product.

Recommendation 6:
That the food safety elements on the food label be reviewed with the aim to maximise the effectiveness of food safety communication.

4.8 The ready identification of allergens and substances hazardous to an individual's health is a significant safety concern and was raised in many submissions. Food labelling requirements relating to mandatory statements and declaration of allergens are covered in the Code. Most* of these requirements are listed in *Standard 1.2.3 Mandatory Warning and Advisory Statements and Declarations* in the Code (refer Explanatory Box 8). Clear directions are provided for the inclusion of warning statements, including their declarations on foods that are exempt from the requirement to bear a label and foods dispensed from vending machines. However, submissions were concerned about allergen declarations. As noted by one industry submission, 'There should be prescribed requirements other than just minimum font sizes for marking of warning statements and other important mandatory statements such as allergen[s] to increase consumers' ability to read these important statements'.[56] There is a requirement to declare an allergen, but this identification may be buried in a bracket in the ingredient list, hardly constituting clear communication of an identifiable hazard to the person with the allergy. The key labelling issues are the prominence of such statements and the broader availability of these declarations. These are dealt with in Chapter 7: Presentation.

Explanatory Box 8:
Standard 1.2.3 Mandatory Warning and Advisory Statements and Declarations

Standard 1.2.3 specifies the mandatory warning and advisory statements and declarations that must be made in relation to certain foods or foods containing certain substances.

Advisory statements and declarations alert consumers to the presence of specific ingredients in a food product, such as a known allergen.

Warning statements provide consumers with information about the presence of a specific ingredient and advice regarding possible health-related outcomes of consuming the food product.

4.9 Concerns were also expressed in submissions that people were not able to obtain information on allergens and food components related to sensitivities when purchasing unlabelled products, such as in restaurants and food outlets and via other food service providers. As noted by one concerned parent: 'In my son's case we [need to] have up to date and accurate [allergen] information at point of sale. Sadly we have been disappointed many times by restaurants who have little sympathy for our

* Prescribed warning statements for foods are also set out in *Standard 2.6.3 Kava; Standard 2.9.1 Infant Formula Products; Standard 2.9.2 Food for Infants; Standard 2.9.4 Formulated Supplementary Sports Foods.*

plight and can't be bothered to understand and manage their allergen issues. ... more effort needs to be made to encourage these businesses to have accurate and up to date information to supply with the food at point of sale.'[57] There is a requirement in the Code for the retailer/food outlet to declare this information on or in connection with the display of the food or to provide such information upon request.[58] The level of consumer dissatisfaction reported in the submissions indicated that this responsibility is not well known within the food service sector and appropriate systems may not be in place to ensure that customers are able to access this information, regardless of staff members' personal knowledge of the food components. As noted by Anaphylaxis Australia Incorporated, there is a need 'to raise awareness at a national level of the poor compliance shown by the food service industry and to suggest measures to improve compliance by education of the industry players and allergic consumers and by urging the jurisdictions to effectively implement and enforce the standard'.[59] Issues relating to monitoring and enforcement are explored in detail in Chapter 8: Compliance and Enforcement.

Recommendation 7:
That there be more effective monitoring and enforcement of the existing requirements in the Food Standards Code to provide mandatory warning and advisory statements and allergen declarations on packages of food not for retail sale, foods for sale at restaurants and other food outlets, foods from mobile food vendors and vending machines, and foods for catering purposes.

4.10 Attention also needs to be directed to regulatory guidance for terms used in advisory statements relating to unintended presence of allergens due to processing practices. One progressive step forward by industry with regard to declaration of allergens in such circumstances and an interesting example of consumer, manufacturer and retailer cooperation, is the Voluntary Incidental Trace Allergen Labelling (VITAL) risk assessment (VRA) process (see Explanatory Box 9).[60] VITAL has received strong consumer acknowledgement as noted by Anaphylaxis Australia Incorporated: 'The Allergen Bureau's VITAL ... is a good example of a code of practice designed to protect public health, but where a consistent industry approach and government backing is essential to its efficacy.'[61] This assessment provides a standardised process and some reassurance for allergen sufferers with regard to adventitious allergen presence. This is an area on which the Code is silent, particularly with regard to use of terms such as 'may contain', 'may be present', 'made on the same machinery' and other like terms. However, the VRA process does not overcome the requirement for clear and readily discernible allergen statements. The VITAL system has generated considerable interest internationally and its further development should be considered.

Explanatory Box 9:
The VITAL Risk Assessment Process

Voluntary Incidental Trace Allergen Labelling (VITAL) is a voluntary system for manufacturers to determine and declare in a standardised manner the level of allergen present in a food due to cross contact from within the factory.

Some retailers, including Woolworths, Coles and McDonalds, require a VITAL risk assessment (VRA) be performed as part of quality assurance standards. VRA is based on a manufacturer's own audit and an Microsoft Excel calculator to determine a parts per million (ppm) measurement of how much of a particular allergen is present in the product, arising from cross contact via machinery use in the factory.

The VRA system then classifies the amount against three levels. Level 1 is very low and presents minimal risk to the majority of allergy sufferers and does not trigger declaration. Level 2 represents a subjective risk and would trigger a precautionary declaration ('may contain: ...') that would be placed immediately after the ingredient list using standardised wording and placement. Level 3 is the level that would trigger active labelling for the presence of the allergen.

Consumers also can ask the manufacturer for information about the specific ppm reading for the product.

Source: Allergen Bureau website: <www.allergenbureau.net>.

Recommendation 8:
That the Voluntary Incidental Trace Allergen Labelling system be explored as a possible supplementary model to manage food label declarations relating to the adventitious presence of allergens in foods.

Nutrition Policy

4.11 In relation to preventative health issues, the food label can be considered as one arm of a comprehensive approach to tackling public health problems. The label would act to reinforce and support other initiatives such as education, dietary guidance and changes in the food supply.[62] This overall approach would identify priority public health issues and specify the range of strategies needed to address these issues. The role of the food label would be to: (a) facilitate consumers' healthy food choices to enable healthy growth, promote wellbeing, reduce risk of chronic illnesses and manage existing conditions; and (b) provide incentives for food manufacturers to gain a competitive advantage by aligning their product formulations with public health goals. Yet such an agenda needs a comprehensive policy framework which would identify priority public health issues and specify the range of strategies needed to address these issues. This framework would include reference to the role of the food label in terms both of mandatory provision of nutrition or health information and any opportunities for industry to take label-related initiatives to support national health goals.

4.12 Unfortunately, Australia and New Zealand lack such a comprehensive policy framework. Different agencies are responsible for different food and nutrition policy areas, such as setting guidelines and public health goals, education strategies, primary and secondary prevention strategies, international food policies, monitoring and research. There are variable connections between the agencies and their policy agendas. The need for such a comprehensive approach was identified by the Preventative Health Taskforce which recommended the establishment of a 'National Food and Nutrition Framework'.[63] Separate recent government announcements regarding food security strategies[64] and development of a national food plan[65] do not appear to have heeded the call for such an all-encompassing approach.

4.13 A national nutrition policy framework would also identify appropriate education and resourcing for health professionals and educators to assist their clients and community groups to make use of nutrition information on food labels,[66] opportunities for industry to initiate and manage collaborative labelling-related programs and the steps necessary to consolidate the array of nutrition information messages.

4.14 Information elements on the food label, such as the Nutrition Information Panel (NIP), ingredient list, nutrition, health and related claims, and interpretative guides/ front-of-pack label information, should have designated roles in nutrition and health information and education strategies adopted by government (see Explanatory Box 10). Acknowledging and using food label elements in this way serves to reduce possible public confusion regarding nutrition messages and acts to maximise the effectiveness of such strategies.

4.15 Clear evidence exists that labelling requirements can influence the food supply to increase the availability of healthy alternatives.[67] Compositional changes can occur when manufacturers aim to achieve competitive advantages. This can be facilitated by providing opportunities to highlight nutritional and health qualities of the food (e.g., via nutrition, health and related claims). Compositional changes can also be brought about through compliance with mandatory declaration of specific ingredients. Such compositional changes may occur independently of consumers' demands. Pursuit of competitive advantage can extend to carrying multiple messages and hence be of interest to multiple market segments (e.g., low fat, low sugar, high fibre), particularly if the manufacturers can do so without modifying the product to such an extent that their original market is no longer attracted to their product.

Explanatory Box 10: Key Nutrition-Related Elements of the Food Label

Nutrition Information Panel (NIP): The NIP provides quantified information on major nutrients in sufficient detail to inform consumers who have or are concerned about specific chronic illnesses/conditions. Information is specific in nature.

Ingredient list: The primary role of the ingredient list is to reassure the purchaser that the food contains the ingredients expected to be present, as depicted by the name of the food. It presents a list of the components of the product, including the percentage of key or characterising ingredients; provides information on food components that the consumer may wish to avoid (e.g., allergens, some additives); and could act to support dietary guidelines through identification of wholegrains, fruit, vegetable and nut components. Information is specific in nature.

Nutrition, health and related claims: Claims made on food labels could serve to highlight special attributes of the food in relation to particular health and nutrition outcomes, consistent with national dietary guidelines or other aspects of public health interest. Information can be general or very specific in nature. The introduction of mandatory statements may be considered by government in the future to achieve public health objectives.

Interpretative guide/front-of-pack label information: front-of-pack elements on the food label can provide consumers with a readily understood signal of the food's 'healthiness' in respect to aspects of the dietary guidelines, particularly key nutrients and energy. Such information/ elements need to be understandable by the majority of the population, in particular low literacy and low numeracy groups who may have difficulty using the NIP information.

4.16 However, the incentive to change products to emphasise their positive attributes or minimise their negative attributes may result in other consequences; for example, trans fats may be replaced with saturated fat[68] or consumers may be encouraged to eat more when a product is promoted as 'healthier', a phenomenon known as the 'halo' effect.[69] Thus while food labelling can facilitate changes in product formulation and support the increased availability of healthy food products, this process needs to be monitored and managed to ensure that unintended negative consequences do not result. This suggests a need for associated requirements for nutrition disclosures and/or imposing nutrition eligibility criteria on foods for which claims are made.

4.17 The extent of the change in people's use of food label information, their food choices and the composition of foods in the food supply cannot be judged without regular monitoring. The USA and Canada both monitor nutrition trends to provide such information to inform food label decisions.[70] The collection of dietary and health data enables their association with reported label use to be determined and appropriate strategies designed to maximise the potential communication and education roles of the food label. To complement quantitative monitoring data, social research also is required to inform how best to maximise consumers' understanding and use of the food label and its elements. The Panel identified limitations in the data that are available on the use and understanding of food labels in Australia and New Zealand, although it noted that FSANZ has recently commenced some ongoing social research.[71]

Recommendation 9:
That a comprehensive Nutrition Policy be developed that includes a framework for the roles of the food label. Key aspects of the framework to be:

a. the provision of food safety and nutrition information and education strategies to protect and promote the health of the population, including articulated roles for food label elements;
b. the encouragement of the provision of healthy foods within the food supply to facilitate healthy diets;
c. the setting and application of nutrient criteria and dietary guidance;
d. the facilitation of social and other research to improve understanding of how label information is used and its impact on food selection, eating behaviours and the food supply;
e. the establishment of monitoring and surveillance systems for dietary/nutrition practices that include the use and understanding of food labels.

Such a policy should be developed as a priority, within the framework of the governments' preventative health agendas and cognisant of the present Australian initiatives on food security and a national food plan.

4.18 Public health issues require multi-strategy approaches to achieve success.[72] This has been acknowledged and accepted by the Australian Government in relation to many public health campaigns.[73] The regulatory requirement for evidence of significant health or behavioural impact and economic assessments for individual food standards (i.e., Regulatory Impact Statements) can act as a barrier to utilising the food label as one component of multi-strategy approaches to tackling public health issues.

4.19 The Panel believes that amendments to the labelling requirements within the Code should not be assessed in isolation of other related public health strategies, nor primarily against economic criteria. A nutrition policy should inform new or revised labelling standards and be included as one of the matters that FSANZ should consider when developing or reviewing food regulatory measures and variations of food regulatory measures.[74]

Recommendation 10:
That the *Food Standards Australia New Zealand Act 1991* be amended to require Food Standards Australia New Zealand to 'have regard' to the comprehensive Nutrition Policy when developing or reviewing labelling standards.

Ingredient List

4.20 Listing ingredients in a standardised manner provides basic information to enable consumers to make decisions regarding the selection of foods to meet their dietary needs. Processed foods usually are presented in 'non-see-through' packaging, which makes food selection using traditional means of sight and smell difficult. The increasing range of food types and varying ingredients in foods also makes selection of a particular type of food or comparison of like products difficult.

4.21 *Standard 1.2.4* of the Code specifies that all ingredients must be listed in order of decreasing ingoing weight and food additives and colourings must be listed using their specific name or code number. *Standard 1.2.10* also requires that the percentage of characterising ingredients and components of certain foods is declared. Consumer submissions supported the importance of the mandatory ingredient list: 'Food labelling elements ... provide vital information to enable consumers to make healthy and informed choices e.g., ingredients lists'.[75] Submissions also identified problems with how the information is presented: 'Scientific names of ingredients are unlikely to be useful (have meaning) for a significant proportion of the population.'[76] A number of issues were raised with the Panel, including listing of food additives and flavourings, listing of like ingredients, quick identification of allergens and listing of ingredients to support dietary guidelines.

4.22 Currently a compound ingredient should include in brackets its components, unless it comprises less than 5% of the food, in which case there is only a requirement to identify any food additives in the compound ingredient that are providing a technological function, such as a preservative or stabilising agent. Comments were made about this requirement at the Panel's public meetings, with consumers expressing their desire to know all the ingredients in foods, as they may react to components in the compound ingredients. However, it may not be feasible or particularly useful to fit the ingredient list on the packet if all the sub-ingredients of compound foods were listed.

4.23 Identification of food additives or flavourings in the ingredient list causes confusion, especially the combined use of scientific terms and code numbers. Manufacturers are required to list the additives by their class name (e.g., emulsifier) followed by the specific name or code number in brackets. If the additive does not belong to a class, its prescribed name should be given. Flavourings are listed generically as 'flavour' or 'flavouring' or by a more specific name or description, as there are thousands of different flavouring chemicals approved for use.* There are also some entities, such as monosodium glutamate (MSG), that when added to a food must be specifically declared.

4.24 Consumers need to be able to quickly identify additives, colourings and flavourings about which they may have some personal concern. A number of strategies can be considered to enable this to occur, such as the identification of colourings, additives and flavourings of concern being placed in a separate but co-located ingredient box. The European Union has required mandatory warning statements for certain contra-indicated colourings.[77]

Recommendation 11:
That industry develop in consultation with government, medical authorities and relevant consumer organisations a voluntary code of practice and education initiatives to enable consumers to quickly identify label information relating to additives, colourings and flavourings that are of agreed medical priority for sensitive consumers.

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* The establishment of specifications of identity and purity for food additives, including flavourings and flavouring agents used in food (1615 flavourings as of 2005) is the responsibility of a joint committee of the World Health Organization and the Food and Agriculture Organization of the United Nations – the Joint Expert Committee on Food Additives (JECFA).

4.25 Many Australian consumers currently use the *Food Additive Code Breaker*[78] and *Additive Alert*[79] guides to assist their purchasing decisions, but the availability of these guides was reported as not being well known by the attendees at the public meetings, particularly in New Zealand. It cannot be assumed that all consumers have access to these guides although they are widely available for purchase at many bookshops in Australia and New Zealand and the 'code breaker' list of names and codes is also available free of charge in portable document format on the FSANZ website, as well as included in a consumer booklet *Choosing the Right Stuff*.[80] Efforts should be made to improve awareness and accessibility of these resources.

4.26 An area that appears to cause some consumer confusion is the individual listing of like ingredients, reducing the apparent contribution to the food of that type of ingredient (e.g., separately listing different sugars or different fats using a variety of terms). Although this listing may be technically accurate, it reduces the opportunity for the consumer to quickly assess the overall contribution of that component type in the food. For example, the Obesity Policy Coalition's submission identifies that 'it is difficult for consumers to interpret from product ingredient lists whether or not sugar is the main or a main ingredient of a product because sugar may be a component of different ingredients that are listed separately or because what is essentially sugar may be labelled as other things, such as glucose, honey, corn syrup or high-fructose corn syrup'.[81] This may be compounded by specific requirements such that 'sugar' can only refer to sucrose when used in ingredient labelling, whereas in the NIP, 'sugars' refers to all simple carbohydrates (while use of the generic term 'sugars' in the ingredient list is prohibited).[82] The Australian Dietary Guideline for sugars is 'take care to consume only moderate amounts of sugars and foods containing added sugars'.[83]

4.27 Alignment of like terms in the ingredient list should reflect dietary guidance and maximise the nutrition information impact of the ingredient information (e.g., an indication of the presence of fruit, vegetables or wholegrain cereals, as well as sugar types grouped together as sugars and fat types grouped together as fats).

4.28 A particular area of concern relating to declarations in the ingredient list was the listing of particular vegetable oils. At present, the Code allows manufacturers to declare such an ingredient as a vegetable oil. The generic declaration of 'vegetable oils' needs further exploration from a public health perspective, as many consumers may presume that vegetable oil is a 'healthier' oil (i.e., it is not a saturated animal fat and thus constitutes a lesser chronic disease risk). However, there are several vegetable oils that are saturated in nature and thus present a health risk, such as palm oil* and

* Palm oil is the subject of a current Australian Senate Bill, Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010. This Bill is primarily focused on animal habitat (orangutan) but palm oil is also of human health interest due to its saturated nature.

coconut oil. It is true, of course, that the informed consumer can refer to information about saturated fat in the NIP. The issue was raised in several submissions, including the following statement by the Commonwealth Scientific and Industrial Research Organisation (CSIRO): 'Some products are labelled as containing "vegetable oil". From this, consumers can expect that this refers to polyunsaturated fats but they may contain oils (such as palm oil) which need not provide the expected benefits ... listing of specific ingredients (instead of classes of ingredients), would in these situations be of significant value to the consumer.'[84]

Recommendation 12:
That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms 'added sugars' and 'added fats' and/or 'added vegetable oils' be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).

Nutrition Information Panel

4.29 The presence of the NIP was strongly supported in submissions and in the academic literature. It provides an important role within a comprehensive approach to the provision of nutrition information on the food label.[85]

4.30 *Standard 1.2.8 Nutrition Information Requirements* specifies the current requirements for NIPs and requires declaration of energy, carbohydrates and sugars, protein, fat, saturated fat, and sodium (see Figure 8). It also requires a NIP if a nutrition claim is made regarding the food, even if the package is otherwise exempt. If a nutrition claim is made for a food that is exempt from the requirement to bear a label, the NIP information must be made available to the purchaser upon request.* Certain conditions are included in the standard if particular nutrition claims are made; for example, claims related to polyunsaturated or monounsaturated fatty acids require a declaration in the NIP. Of note is the exemption of alcoholic beverages from the requirement to contain a NIP unless a nutrition claim is made.

* Transitional *Standard 1.1A.2* also requires a NIP when a folate/neural tube defect health claim is made.

Figure 8: The Nutrition Information Panel

Nutrition information Servings per package: (insert number of servings) Serving size: g (or mL or other units as appropriate)		
	Quantity per Serving	Quantity per 100 g (or 100 mL)
Energy	kJ (Cal)	kJ (Cal)
Protein	g	g
Fat, total	g	g
saturated	g	g
Carbohydrate	g	g
sugars	g	g
Sodium	mg (mmol)	mg (mmol)
(insert any other nutrient or biologically active substance to be declared)	g, mg, µg (or other units as appropriate)	g, mg, µg (or other units as appropriate)

Source: Adapted from Food Standards Code, *Standard 1.2.8 Nutrition Information Requirements.*

4.31 Within the context of the overall food label, the NIP provides quantitative information on nutrients in the food and can act as an important link between the various nutrition labelling components. In particular, it acts to augment other nutritional information on the label. Knowledge of the nutrition needs of populations changes over time, such as the recent recognition of the need for adequate omega-3 intake during pregnancy and lactation.[86] As a result, nutrition policy will change over time, possibly resulting in different requirements for the food label. This will necessitate regular review of the nutrients declared in the NIP. As part of this Review of the food label, the Panel has considered four specific issues relating to the NIP which were raised in submissions and have been identified by food standards agencies overseas.

4.32 Trans fatty acids (TFA) are nutrients of concern due to their association with increased risk of cardiovascular disease. The WHO and Australia, the USA and other countries specifically mention reducing TFA in dietary guidance documents.[87] The food regulations in the USA[88] have made declarations of manufactured TFA mandatory and the European Parliament is considering a voluntary declaration of artificial TFA in the NIP[89]. In other locations in North America,[90] the use of manufactured TFA in restaurants and food outlets has been banned. Numerous submissions expressed concerns regarding trans fat and wanted it to be declared in the NIP.

4.33 In Australia and New Zealand, the declaration of total TFA (manufactured plus naturally occurring) is required if claims relating to types of fat are made on the food label. Otherwise, declaration is voluntary. TFA are normally just counted within the total fat component in the NIP. This labelling position was reaffirmed following a review by FSANZ of TFA in the New Zealand and Australian food supply, which concluded that 'mean total TFA intake from both ruminant and manufactured sources is now estimated to be 0.5–0.6% of total dietary energy, with more than 90% of Australians and more than 85% of New Zealanders having TFA intakes below 1% of total energy intake. These figures indicate that Australia and New Zealand continue to meet the WHO population goal for TFA intake'.[91]

4.34 There are mixed scientific views regarding whether naturally occurring TFA, which occurs in animal products, has the same impact on cardiovascular risk status. A recent review[92] indicates that the effects appear similar. People consume less manufactured than animal TFA and this consumption pattern will vary between countries. However, declaration of naturally occurring TFA, which predominantly occurs in dairy products, may have the effect of consumers avoiding these foods, impacting on their consumption of other key nutrients such as calcium.

4.35 The Panel accepts that the requirement for information on the label should complement agreed public health goals. However, specific goals to reduce the levels of TFA in the Australian and New Zealand diets have not yet been set. The Panel noted that substantial reductions in TFA in the food supply have been achieved. However, there are still some particular food products that contain significant levels of manufactured TFA, well above the 1% of energy threshold recommended by the WHO. The FSANZ results also indicate that between 10–15% of the populations in Australia and New Zealand are still consuming worrying amounts of TFA. Disclosure of TFA in the NIP would serve the dual purpose of providing information to consumers to enable them to avoid products with high levels of TFA, as well as an incentive for food manufacturers to increase their efforts to minimise TFA in the food supply.

Recommendation 13:
That mandatory declaration of all trans fatty acids above an agreed threshold be introduced in the Nutrition Information Panel if manufactured trans fatty acids have not been phased out of the food supply by January 2013.

4.36 Fibre has been identified in the scientific literature,[93] and recently by the European Union,[94] as a key nutrient to be declared in the NIP. Numerous submissions also supported declaration of fibre in the NIP; the Canterbury District Health Board stated: 'Label information recommendations [should] reflect national/international recommendations for a healthy diet and

include: k[J] value, fat, saturated fat, trans fats content, sugars, fibre, sodium/salt'.[95] In considering whether to recommend the requirement for fibre in the mandatory NIP for all foods, the Panel considered the food labelling policy principle that requirements for information on the label should reflect national nutrition policy guidance. The *Dietary Guidelines for Australian Adults* (2003) identifies the importance of fibre, particularly as part of whole cereals, fruits or vegetables, in relation to reduced risk of cardiovascular disease and improved gut health.[96] Thus requiring a declaration of naturally occurring fibre in the NIP is consistent with this dietary guideline. Specifying fibre as naturally occurring is important, as this will act to encourage consumption of wholegrain cereals, fruits and vegetables, more accurately reflecting the intent of the dietary guidelines and maximising the beneficial effects of the diet more broadly.*

Recommendation 14:
That declaration of total and naturally occurring fibre content be considered as a mandatory requirement in the Nutrition Information Panel.

4.37 Potassium has more recently been identified by health professionals as an important nutrient to declare.[97] Low potassium intakes are important for people with kidney dysfunction, a common complication of diabetes, the prevalence of which is increasing due to the higher proportions of the population in western countries who are overweight or obese.[98] The Australian Chronic Disease Prevention Alliance noted in their submission that 'in particular, potassium levels must be listed as a compulsory nutrient on the Nutrition Information Panels because consumption of potassium in people with kidney disease or in those taking potassium elevating drugs can lead to potentially life threatening hyper-kalaemia'.[99]

4.38 Potassium levels may have increased in foods as a consequence of the chronic disease focus on reducing sodium because of its relationship with increased risk of high blood pressure. Manufacturers may substitute sodium salts with potassium salts,[100] but it is not clear the extent to which this has occurred. With the Australian Government's Food and Health Dialogue making a commitment to reduce the amount of sodium in manufactured foods,[101] it will be important to monitor levels of potassium in foods. This adds support to making the declaration of potassium mandatory. In considering a recommendation in relation to potassium, the Panel reflected the food labelling principle that label requirements should complement national nutrition priorities. Clearly, there is an emerging issue in relation

* The beneficial effects of consuming wholegrain cereals, legumes, fruits and vegetables are not just associated with fibre but also with vitamins, minerals, antioxidants and phytonutrients (J Slavin et al. 'The role of whole grains in disease prevention', *JADA*, vol. 101, no. 7, 2001, pp. 780–5; World Cancer Research Fund & American Institute for Cancer Research, *Food, nutrition, physical activity, and the prevention of cancer: A global perspective*, American Institute for Cancer Research, Washington DC, 2007).

to consumption of potassium, but as there currently are no national policy statements in relation to potassium, mandating its declaration on the label would not be appropriate at this point in time.

Recommendation 15:
That voluntary declaration of potassium content in the Nutrition Information Panel be actively considered by industry. If nutritional policy guidance recommends the reduction in consumption of potassium for at-risk population groups in the future, disclosure of potassium in the Nutrition Information Panel should become mandatory.

4.39 Declaring the amount of sodium in food is a mandatory requirement of NIPs. However, nutrition education messages have referred to the generic term 'salt' as a proxy for sodium chloride. This has caused consumer confusion, as not all salts are sodium chloride and a unit of sodium in the NIP does not equate to a unit of 'salt' as referred to in nutrition education messages.

4.40 Several approaches could be considered. The current dietary guideline recommends levels for both salt and sodium: less than 6 grams of common salt or less than 2300 milligrams for sodium (100 millimoles) per day. However, education activities have generally presented the recommendation as 'eat less salt' rather than 'eat less sodium'. A change in this primary education message would require a concerted effort, as the term 'salt' in the context of a healthy diet has a high recognition level, albeit inaccurate scientifically. To assist in this educational process, the NIP could include a conversion note to identify how to convert the amount of sodium to an amount of 'salt' or interpretative information could be provided on the label to communicate the appropriateness of the sodium level in relation to dietary guidance. Any change to the current educational initiatives should be based on evidence from social research.

Recommendation 16:
That social research be undertaken to determine effective mechanisms to present sodium/salt information on food labels to facilitate consumers' understanding and use of this information.

4.41 The presentation of the NIP has also received considerable attention, as consumers have found it confusing, if not misleading. This is particularly the case in relation to the declaration of amounts of nutrients per serve and the practice of nutrient declaration as a percentage of daily value. In Australia and New Zealand, serving sizes are determined by the manufacturer. Research has indicated that nominated serving size is often not consistent with how individuals would consume that food.[102] An alternative is for the government to mandate serving size as occurs in the USA. In Australia, government is working with the Food and Health Dialogue to at least

establish appropriate portion sizes to inform consumer awareness activities.[103] However, there is little indication that declaration of amounts of nutrients per standard serving size is helpful in guiding consumers' food intakes.[104]

4.42 A simpler approach is to reduce the volume of information in the NIP by just declaring amounts of nutrients per 100 gm/100 ml, while retaining the general statement on serving size. This would permit a standardised way of comparing nutritional qualities of foods. However, it does presume some numeracy capacity of consumers and thus should be considered within the context of other, more easily understood nutrition advice being on the food label. The current requirement to make available the nutrient information per serve if a daily intake claim is made should be retained.

Recommendation 17:
That the declaration in the Nutrition Information Panel of amount of nutrients per serve be no longer mandatory unless a daily intake claim is made.

4.43 A broader consideration is the extension of the requirement for NIP information to be available in the context of chain food service outlets providing standardised menu items and vending machines.* In the context of this Report, chain food service outlets are those that have standardised menu items over multiple stores, including outlets that have delivery-only operations (e.g., some pizza suppliers, weight management services and other meal providers) and non-seating venues (e.g., drive-throughs and bakery chains selling meal items such as pies and sausage rolls). Restaurants that have regularly changing menus and that predominantly make food to order are not included. In addition, home-delivered meals originating from government or community organisations (e.g., Meals on Wheels) are not included as they have other mechanisms to monitor nutritional value, such as accreditation requirements, although these may vary between jurisdictions.

4.44 Regular consumption of food outside of the home has been associated with poorer diet quality and greater risk for obesity in children, making it important to consider this sector in any comprehensive food labelling policy.[105] The patronage of this sector has been steadily increasing, with a 30% increase in expenditure in Australia on dining outside the home between 1985–86 and 2005–06.[106] In 2007 there were estimated to be around 17,000 fast food outlets in Australia that served approximately 1.64 billion meals over the 12 month period.[107] Vending machines are also

* Chain food service outlets and vending machines have common characteristics: they provide food that is purchased away from home; have standardised recipes from a number of franchised outlets; and provide foods that either are not labelled or the label is not accessible prior to purchase.

pervasive in the daily food environment. They are positioned in schools, worksites and public transport locations and provide ready access for impulse food purchases that predominantly are high in energy, fat and sugar.[108] Although individual items within the machines are labelled, it is not possible to access this information prior to purchase. Requiring display of minimum nutrition information would mirror the current mandatory requirement in the Code to display warning statements and allergen information.

4.45 The importance of requiring declaration of nutrition information in these food sector locations was raised in the submissions and was a recommendation of the National Preventative Health Taskforce. It also has become a regulatory requirement in other countries; for example, energy declarations of standard meals provided in these settings have recently become mandatory in the USA within the *Patient Protection and Affordable Care Act,*[109] and some states in Canada have introduced a similar policy. In the UK, companies such as Burger King (Hungry Jacks in Australia), KFC, Pizza Hut and Subway have already committed to displaying energy information at the point of sale. Evaluation research found that the companies were able to implement the strategy with relative ease.[110] More recently in Australia, the former Victorian Premier announced his government's intention to introduce similar requirements for fast food chains with more than 50 outlets in that state or more than 200 outlets nationally.[111] Similarly, the New South Wales Premier recently announced the introduction of mandatory declaration of energy values of food items in food chains of 20 or more in NSW or 50 or more nationally.[112] The Panel noted these differences and suggests that determination of the number of outlets/franchises/vending machines is best determined at the national level.

4.46 Although there has been limited research on food service outlet menu labelling, the results suggest that consumers are generally supportive of nutrition labelling in this context.[113] There was general agreement in submissions from consumers and consumer groups that food outlets should provide more nutrition and ingredient information at the point of sale to assist consumers with their selections. Some government submissions also commented on this area, highlighting the need for consistency: 'Information is not provided in a consistent format; is only available for selected menu items; and is not provided consistently to the consumer at point of sale'.[114] They also stress the importance of considering the impact on industry: 'Mandatory food labelling requirements for the food service sector may be achievable for large multinational companies but would particularly disadvantage small local enterprise'.[115] Mandatory menu labelling has the potential to result in favourable product reformulation as the large chains work to ensure their offerings are in line with consumers' nutrition expectations.

4.47 It is likely that at least some consumers patronise chain food service outlets with the intention to indulge and therefore do not perceive the need for

nutritional information. However, research shows that consumers may change their orders after exposure to nutrition information at the point of sale,[116] especially when purchasing meals for children.[117] Some also compensate at other meals to accommodate the energy load once they are aware of the energy consumed at food outlets. A further consideration is that consumers have little knowledge regarding the nutrient profiles of foods eaten outside the home and this gap could be effectively addressed with menu labelling.

Recommendation 18:
That declaration of energy content of standardised food items on the menu/menu boards or in close proximity to the food display or menu be mandatory in chain food service outlets and on vending machines. Further, information equivalent to that provided by the Nutrition Information Panel should be available in a readily accessible form in chain food service outlets.

Nutrition, Health and Related Claims

4.48 Food manufacturers and marketers make a range of claims on the food label that pertain to the qualities of their products. Consumer laws are in place to ensure that such claims are not misleading or deceptive. At present the Code allows the use of terms related to nutrition attributes of the food (e.g., low in salt) and a limited number of claims that relate to health. The Panel was directed to consider the regulatory activities to date in this area of nutrition, health and related claims.

4.49 Views are polarised on the extent to which nutrition, health and related claims should be permitted. Industry submissions noted that such labelling claims would act to facilitate innovation, while some public health and consumer groups noted that 'health claims [have] proliferated despite the existing prohibition' and that they can mislead and detract from public health messages.[118]

4.50 Given that there are health claims in the marketplace, there was a recognised need for government oversight within a broader nutrition policy framework. This oversight would ensure that such claims reflect public health messages and would also be necessary to support the development of a comprehensive, enforceable standard to limit the potential for misleading and confusing claims to be made. As noted in a consumer group submission, 'Lack of industry co-operation in enforcing the Code of Practice on Nutrient [C]laims in labels and in advertisements suggests that the food industry will not take self- or co-regulation seriously'.[119] A public health framework would also provide direction as to those food products that would not be considered as suitable to carry claims, including foods for infants under 12 months and alcoholic beverages.

4.51 FSANZ and its predecessors (the National Food Authority and the Australia New Zealand Food Authority) over the last 15 years have devoted significant resources in an effort to develop a standard for nutrition, health and related claims. Policy principles have been endorsed by the Ministerial Council for nutrition, health and related claims for food providing that any intervention by government should 'give priority to protecting and improving the health of the population; [and] be consistent with and complement Australian and New Zealand national policies and legislation including those relating to nutrition and health promotion, fair trading, industry growth and international trade and innovation'.[120] FSANZ subsequently finalised a draft standard that was provided to the Ministerial Council in May 2008. The most recent step in this process was a request by the Ministerial Council for FSANZ to review the draft standard by October 2011.

4.52 The Panel acknowledges that the development of this standard is consistent with activities in Canada, the European Union and the USA, and reflects the Codex framework set out in 1997 (see Explanatory Box 11). The Panel supports the same four core elements identified by these countries, with slight variations, as the elements of the framework for health claims, namely the range of claims, the level of substantiation evidence to support the claim, nutrient profiling of foods and some pre-approval of nutrition and health relationships.

4.53 The Panel took a broad approach to such claims to determine an overarching policy position that incorporated a range of regulatory approaches. All health-related claims on labels were considered, from use of simple words that may imply health benefits (e.g., pure, natural), statements of content relating to nutrition (e.g., good source of fibre), and statements about specific relationships between food components and health that may be of a general nature (e.g., calcium is good for strong bones and teeth) or specific to a serious disease or biomarker* (e.g., healthy diets high in calcium may increase bone mineral density).[121]

Explanatory Box 11: Codex Alimentarius Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997)

"Nutrition claims should be consistent with national nutrition policy and support that policy. Only nutrition claims that support national nutrition policy should be allowed.

Health claims should be consistent with national health policy, including nutrition policy and support such policies where applicable. Health claims should be supported by a sound and sufficient body of scientific evidence to substantiate the claim, provide truthful and non-misleading information to aid consumers in choosing healthful diets and be supported by specific consumer education. The impact of health claims on consumers' eating behaviours and dietary patterns should be monitored, in general, by competent authorities.'

[underlining added]

* A biomarker is one indicator of a person's risk of developing a serious disease (e.g., blood cholesterol is a biomarker for the risk of heart disease).

4.54 At their most simple, the use of words that appear on food labels such as 'pure' and 'natural' may imply health benefits to consumers. The proliferation in the use of such terms has met with ongoing criticism from consumer groups[122] and may serve to undermine consumers' trust in the overall regulation of health-related claims.[123] There is a need to discipline the use of such ambiguous terms through a responsive regulatory approach. It is not proposed that these be regulated through the Code, as it is recognised that legal definitions may be difficult. As noted in the Tasmanian Government submission: 'It is difficult to accurately define terms such as 'natural' or 'fresh'... it would be difficult to establish agreed definitions and enforce these under the [Code] ... or under consumer laws.'[124]

Recommendation 19:
That a responsive regulatory approach to the use of simple words and terms that may infer health implications be commenced, with the food industry working with Food Standards Australia New Zealand to develop a Code of Practice covering consistent use of definitions for such words and terms, with a view to their use being restricted if appropriate constraint is not implemented.

4.55 At the next level, conditions for making certain nutrient content and nutrition claims, such as low joule or omega fatty acid claims, are already detailed in *Standard 1.2.8* of the Code. Specifying such conditions minimises opportunities for misuse of simple nutrition claims and pre-empts the need for further substantiation. The Panel supports the retention of a list of nutrient content and nutrition claims within the Code. However the list should be reviewed to reflect national nutrition priorities.

4.56 More explicit claims that are currently prohibited in the Code (with one exception)*, have the potential to make general or specific reference to health conditions, illnesses or biomarkers. General level claims would refer to normal growth and development and often would be relevant to a range of foods. For example, many foods contain calcium and their consumption would help to maintain healthy bones and teeth. A higher level health claim would relate an attribute of a food to the reduction of risk for a serious illness or reduce the level of biomarker for a serious illness. Such a claim often would relate to a food that has more specific attributes, such as being a particularly good source of a nutrient or contains a new component (e.g., phytostanol). In all cases health claims are used by food manufacturers to enable positive product differentiation. At the same time such claims have the potential to influence consumers' understanding of food and health relationships and consumers' food choices. Thus while supportive of the development of health claims, the Panel considered that conditions should be imposed on their use

* *Transitional Standard 1.1A.2 Health Claims* permits a specific health claim in relation to folate.

and they should be regulated through the Code.

4.57 Much attention has been directed to the integrity of such health claims and the regulation of their use. A consistent overall approach requires that all health claims made on food labels need to be based on either clear definitions or substantiated food-health relationships. It is important to ensure that high levels of scientific integrity are maintained; all food manufacturers, not just larger manufacturers with more resources, are able to appropriately substantiate claims they wish to place on their food labels; and clarity is achieved for enforcement purposes. A possible substantiation typology for claims is set out in Explanatory Box 12. The Panel notes that FSANZ has been undertaking work in this area.[125]

Explanatory Box 12: Substantiation of Claims

Definitions/specification: The Code lists nutrients and nutrition terms with agreed public health relevance and specifies conditions for their use on the label.

Pre-approved relationships: FSANZ pre-approves food and health relationships that manufacturers can use if the food meets prescribed nutrient content.

Authoritative sources: Claims approved by certain recognised authorities may be used.

Systematic review: A manufacturer undertakes a systematic review, applying an appropriate protocol and has a quality assurance process in place that can be independently reviewed by enforcement officers.

Pre-market assessment and approval: A manufacturer submits a systematic review supporting their proposed claim for scrutiny by FSANZ.

4.58 A further consideration in relation to health claims made on food labels is that they should support rather than undermine broader public health messages. One way this can be achieved is by ensuring that claims are restricted to foods that reflect public health dietary recommendations. A nutrient profiling system for foods, also known as 'eligibility criteria', should underpin nutrition, health and related claims covered in the Code.

4.59 A second way to ensure that nutrition, health and related claims act to reinforce public health and nutrition messages is to require them to be linked to other nutrition information components on the food label. Quantitative declarations of nutrients (e.g., calcium) would be required in the NIP or of substances (e.g., echinacea) in the ingredient list. This would reinforce the veracity of legitimate nutrition-related statements and act to reduce the number of potentially misleading statements.

4.60 Linking use of health claims to the display of an approved interpretative FoPL element would quickly communicate to the public the nutritional profile of the food carrying the claim. The Panel considered that such an additional requirement was appropriate in relation to general and high level health claims, when they are introduced. It would also communicate that the food, while providing some benefit as outlined in the claim statement, may not be suitable for people with certain conditions. For example, the food may have a moderate level of sodium and not be appropriate for

people with hypertension. It was not considered justifiable to impose this additional requirement on nutrient content and nutrition claims that are already permitted in the Code. Review of this requirement for display of FoPL elements should be undertaken within five years of introduction to determine if its use should be broadened to other levels of health claims. Table 1 summarises the overall approach to nutrition, health and related claims on food labels.

Table 1: Summary of overall approach to Nutrition, Health and Related Claims

<table>
<tr><th>Range of nutrition, health and related claims</th><th>Regulatory approach</th><th>Substantiation</th><th colspan="2">Conditions for use</th></tr>
<tr><td>Words</td><td>Code of Practice</td><td>Definitions</td><td colspan="2">Outlined in Code of Practice</td></tr>
<tr><td>Nutrient and nutrition statements</td><td>Food Standards Code</td><td>Criteria for use</td><td rowspan="3">Food meets nutrient profile criteria

Complementary declarations in NIP or ingredient list</td><td></td></tr>
<tr><td>Health claims – general level</td><td>Food Standards Code – manufacturer responsible for substantiation</td><td>Specified approved methods of substantiation.
Some approved food-health relationships listed in Code</td><td>Display of front-of-pack label elements</td></tr>
<tr><td>Health claims – high level</td><td>Food Standards Code – submit substantiation for approval</td><td>Pre-market assessment and approval. Specified in Code.</td></tr>
</table>

Recommendation 20:
That the Standard for nutrition, health and related claims on food labels which reflects agreed public health goals be finalised and that it include the following:

a. a hierarchy of substantiation of claims at the various levels, that would encompass use of defined nutrition words and terms, pre-approved relationships, authoritative sources, systematic review and pre-market assessment and approval;

b. a requirement that all foods that carry a nutrition, health and related claim comply with an agreed nutrient profiling system;

c. a requirement that the presence of a nutrition, health and related claim triggers relevant information disclosures in the Nutrition Information Panel or ingredients list; and

d. a requirement that the presence of a general or high level claim triggers display of standardised front-of-pack label information.

4.61 The introduction of a nutrition, health and related claims standard will have labelling consequences which must be effectively enforced. This requires a range of mechanisms to monitor the use of claims, enforce the standards and ensure the linkages with other regulatory regimes are transparent and functional. The former Victorian Government's submission supported a range of options to regulate claims, including the Food Standards Code, existing law relating to misleading or deceptive conduct or the development of a new 'succinct "fit for purpose" law ... supplemented by an industry code of conduct'.[126] Successful enforcement requires commitment from jurisdictions and the food industry to ensure adherence by food manufacturers combined with appropriate education and resourcing of enforcement officers. Further, an appropriate independent body is required to act as an objective arbitrator of claims disputes and ensure that claims can be substantiated and are presented in a balanced manner, so that the health advantages of a product are not emphasised while the health disadvantages are neglected. This is further outlined in Chapter 8: Compliance and Enforcement.

4.62 The intent of a nutrition, health and related claims system should not be subverted by the unscrupulous use of trade names or trademarks (devices, brand identifiers, etc.) that could imply terms that the Code prevents (e.g., 'Cholesterol Free Foods Pty Ltd'). Under current law, there are already restrictions on the registration and use of names with particular associations or implications (e.g., 'ANZAC' or 'University') or are otherwise considered not to be in the public interest. Trademark applications that imply particular associations can also be rejected. In addition, some legislation prohibits the use of particular trademarks. The Panel notes that some submissions were concerned about this issue, with the New South Wales Government suggesting that 'the involvement of FSANZ and jurisdictions in the registration process for food [t]rade [m]arks would be desirable, so that objections to names that are contrary to labelling requirements in the Code can be addressed before trade mark names are registered'.[127] The South Australian Government advocated 'a joint Government approach ... working with Intellectual Property Australia to consider the conflict between trademarks on food and the potential misleading quality of such labelling'.[128] These suggestions could apply to company and business names as well.

Recommendation 21:
That applications for trade names and trademarks be scrutinised by the relevant agencies to identify and reject words and devices that have the effect of inferring health implications that are otherwise prohibited under the Food Standards Code.

4.63 Governments may also wish to instigate mandatory messages that support preventative health strategies. These would necessarily have to meet the same high standards demanded of industry-initiated health claims in terms of substantiation requirements. As with industry-initiated health claims, the proposed actions would need to be sustained by a comprehensive nutrition policy or national health guidelines. But unlike industry, which invests its own money in making industry-initiated health claims, government is investing tax payer funds so an even higher standard should be demanded. For any mandated public health messages the epidemiological evidence would have to be powerful, justifying the intervention by reference to both the extent of the health problem in the population and the strength of the causal relations between the health problems and the messages. Moreover, as there is little evidence that label messages are effective in isolation and it is unfair to burden industry alone with tasks relating to problems that are society wide, any mandatory requirement of a general nature should only be imposed if it were one part of a multifaceted societal campaign.

Recommendation 22:
That mandatory messages supporting preventative health strategies may be instigated by governments, provided the following conditions are met:

a. substantiation requirements are fulfilled — the epidemiological evidence is strong;
b. the message is consistent with the comprehensive Nutrition Policy;
c. food labelling is an appropriate response to the problem; and
d. the label is one part of a multifaceted campaign.

4.64 It is important to reflect on the role of nutrition, health and related claims on different types of products at the interface of food, complementary medicines and dietary supplements that are currently located within separate government regulatory frameworks. Different regulatory requirements may lead to industry presenting their products within the more amenable framework (e.g., various herbal components in fruit drinks, with related claims being made). The key issue is how to secure a seamless continuum in relation to health claims across these product types. As noted in the South Australian Government submission, 'It is important that foods should not be permitted to make claims that are not allowed on complementary medicines and that the levels of evidence required to substantiate claims are at least equivalent'.[129] The introduction of health claims in the food regulatory regime will make more urgent the resolution of these interface problems.

Recommendation 23:
That a consistent, seamless regulatory approach for nutrition, health and related claims be adopted for food, complementary medicines and dietary supplements.

Alcohol

4.65 Alcohol presents a further and distinct public health issue. A number of submissions argued that alcohol should not be treated as a food at all but should be dealt with through regulatory arrangements other than FSANZ. However, the majority of submissions referring to alcohol tended to treat it as a food product of a very special nature with a number of unique characteristics. The labelling of alcohol is certainly treated in a unique manner in the Code. Alcohol is exempt from the NIP requirement and from the listing of ingredients, but declarations of alcohol by volume and the number of standard drinks in the container are required.[130] While recognising the unique features of alcohol as a food, given its inclusion in the Code, the Panel sees no prima facie reason for excluding alcohol from the purview of this Review. The Panel shares the view advanced in the South Australian Government submission that 'the differentiation of alcohol to require additional labelling components does not automatically exempt alcohol from adhering to existing requirements in the interest of consumer information and food safety'.[131] The Panel believes there are compelling reasons for applying labelling changes to alcohol in the light of growing evidence relating to the short- and long-term adverse health effects of alcohol consumption.

4.66 The consumption of alcohol is culturally ingrained in Australia and New Zealand. Per capita consumption rates are relatively high at 9.9 litres and 9.3 litres of pure alcohol per year, respectively.[132] In surveys, 80% of New Zealanders described themselves as drinkers[133] and 90% of Australians reported having consumed alcohol on at least one occasion, with 41% reporting consumption in the previous week (2007).[134] Consumption in Australia is currently at one of the highest points in the last 20 years.[135]

4.67 The short- and long-term health consequences of alcohol consumption mean that it has both food safety and preventative health implications. In 2007, the Australian Institute of Health and Welfare (AIHW) National Drug Survey reported that 20.1% of Australians (aged 14+ years) consumed alcohol at risky or high-risk levels in the short term; 8.6% consumed alcohol at levels likely to be harmful in both the long term and the short term; and a further 60.8% consumed alcohol at levels considered as low risk in the short or long term.[136] The New Zealand Health Survey found that 17.7% of the adult population are hazardous drinkers[137] (i.e., had a high risk of future damage to their physical and/or mental health due to drinking alcohol), while the Alcohol Advisory Council monitor classifies 25% of New Zealanders as binge drinkers.[138]

4.68 Short-term overconsumption has an impact on brain performance and a resultant impact on human operational parameters such as judgment, fine motor skills, cognitive ability, mood and overall behaviour. These effects can result in adverse outcomes that have individual and societal

consequences, such as motor vehicle accidents, violent behaviour, crime and losses in workplace productivity. In many cases, the short-term impacts also become long-term impacts (e.g., long-term/permanent injuries from motor vehicle accidents).

4.69 The National Health and Medical Research Council (NHMRC) reports a number of adverse long-term health effects from the cumulative effect of alcohol consumption.[139] These include higher incidences of cardiovascular disease, a range of cancers, diabetes, overweight and obesity, liver disease, mental illness and alcohol dependency. However, the National Alcohol Strategy notes that 'there is also evidence that alcohol can benefit the health of some individuals, if consumed at low levels, by contributing to the reduction of cardiovascular disease risk from middle-age onwards'.[140] The current NHMRC maximum intake recommendation is no more than two standard drinks on any one day. The New Zealand recommendations are somewhat more liberal, recommending no more than six standard drinks on any one occasion for men and four for women.*

4.70 There are many analyses of the societal cost of alcohol-related crime, injury and longer term health outcomes. Estimates of these costs are A$15 billion p.a. for Australia[141] and around NZ$5 billion p.a. for New Zealand[142]. In Australia, 12.9% of the costs relate to health costs (the largest single cost was attributed to loss of work place production at 23.4%). It should be noted that critics point out that the revenue derived from alcohol taxes may offset these costs.† This suggests that caution is advisable when using such figures, but also that econometric analyses have limitations in assessing the true costs and benefits to a society.

4.71 A growing recognition of the individual and societal costs of excessive alcohol consumption has resulted in debate about the potential of warning labels to modify consumers' behaviour. Submissions from public health aligned bodies (e.g., Heart Foundation, Australian Medical Association) recommended that labels on alcohol packages should advise consumers of the dangers of overconsumption. The Preventative Health Taskforce recommended that 'health advisory information labelling [be required] on containers and packaging of all alcohol products to communicate key information that promotes safer consumption of alcohol'.[143] The Panel believes this recommendation deserves exploration. Alcohol Healthwatch in New Zealand also takes the view that 'warning messages are a cost-effective way of raising awareness and reminding the public of the risks associated with drinking'.[144]

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* Alcohol Advisory Council of New Zealand recommendations. Both Australia and New Zealand class a standard drink as containing 10 g of alcohol.

† Access Economics concluded that 'alcohol taxes thus more than pay for the public budget costs of alcohol abuse, by a considerable margin, each year' (Access Economics, *Review of the range and magnitude of alcohol's harm to others*, Report for the National Alcohol Beverage Industries Council, 2010, p. 32).

4.72 Warning labels on alcohol can be of two types: *generic* warning messages, which warn about the general implications of excessive alcohol intake and *specific* warning messages, which link alcohol consumption to a specific outcome. Examples of generic warnings are 'Drinking to excess is a danger to yourself and those around you' and 'Alcohol can damage your health'. A specific warning would be 'Do not drink and drive' or 'Drinking alcohol harms your liver'.

4.73 There is wide recognition that warning labels in isolation are unlikely to be effective in modifying behaviour. Research on the effects of alcohol warnings labels, carried out mainly in the USA where such labelling was implemented in 1989, shows that while awareness and understanding of the message increases, generally labelling does not of itself result in behaviour change. A recent literature review concluded that 'although there is some limited evidence of effects on knowledge and attitudes, there is only slight evidence of any effects on drinking behaviour'.[145]

4.74 Yet the Panel believes it would be premature to rule out the value of alcohol warning labels on the basis of these conclusions. The authors of the literature review quoted above went on to note that 'unlike current cigarette warnings, alcohol warning labels have been extremely limited in scope' and that 'it is not surprising in these circumstances that no effectiveness in changing behaviour has been shown for alcohol warning labels'.[146] They concluded that 'the tobacco experience points the way to alcohol warning labels with a greater chance of effectiveness in changing behaviour' and that 'warning messages on [alcohol] containers and elsewhere should be linked with messages in other prevention initiatives'.[147] It is this linkage with wider educative campaigns that is the critical factor, at least for generic warnings. As the Panel argued earlier in relation to generalised preventative health warnings, relying on labelling as the only or the critical tool is unlikely to be productive. Generic warning messages on the labels of alcohol could only be justified if they complement and are 'complemented by a wider range of strategies aimed at changing drinking behaviour'.[148]

Recommendation 24:
That generic alcohol warning messages be placed on alcohol labels but only as an element of a comprehensive multifaceted national campaign targeting the public health problems of alcohol in society.

4.75 Specific alcohol warnings raise related but distinct issues. A number of submissions called for warning labels relating to the dangers of alcohol consumed during pregnancy and lactation. These dangers are now widely recognised. The term Fetal Alcohol Spectrum Disorders (FASD) (see Explanatory Box 13) is widely accepted as 'the umbrella (educational) term ... used to describe the range of disabilities and a continuum of effects that may arise from prenatal exposure to alcohol'.[149] FASD is regarded as

the 'most common cause of non-hereditary mental retardation'.[150] The NHMRC advises that 'maternal alcohol consumption can harm the developing fetus or breastfeeding baby' and that 'for women who are pregnant or planning a pregnancy ... [and] ... for women who are breastfeeding, not drinking is the safest option'.[151]

Explanatory Box 13: Fetal Alcohol Spectrum Disorders

FASD is not a clinical diagnosis in itself but represents a range of diagnoses that fall under the spectrum. These diagnoses are Fetal Alcohol Syndrome (FAS), partial Fetal Alcohol Syndrome (pFAS), Alcohol Related Neurodevelopmental Disorders (ARND) and Alcohol Related Birth Defects (ARBD).

While the incidence in Australia has only been reviewed in terms of FAS (estimated in children under 5 to be 1.14 per 100,000 non-indigenous children and 14.60 per 100,000 indigenous children), the incidence of FASD in the USA and some Western European studies may be as high as 2–5% of younger school-aged children.

4.76 There has been significant societal communication about the need to cease alcohol consumption during pregnancy. However, the degree to which this information has penetrated the population and, more importantly, influenced drinking behaviour in the target group appears to be low. Australian studies suggest that a large proportion of women of child-bearing age consume alcohol, often at high levels and that a majority of women drink alcohol during pregnancy.[152] A recent New Zealand study reported that 28.7% of pregnant women continued to drink during pregnancy even after being explicitly informed of the risk.[153]

4.77 This must raise doubts as to whether specific warning advice on labels regarding the risks of alcohol consumption while pregnant will impact overall behaviour, even given extensive societal information on the subject. As noted above for general alcohol warning messages, evidence from the USA indicates that while awareness of warning messages relating to consumption during pregnancy is high, translation of the advice to behaviour is low.

4.78 Given this uncertainty, the Winemakers' Federation of Australia concludes that given 'a myriad of print and website materials readily available for women [on this subject]' warning labels would be an unnecessary imposition on the industry.[154] Yet for the Panel this leads it to a contrary conclusion. It appears a glaring omission in the overall public health communication about FASD to have information advising against alcohol consumption when pregnant broadly and readily available across many channels (e.g., GP surgeries, baby clinics, prenatal classes, pregnancy books and other literature), but not at the point of sale. The Panel does not believe this omission can be justified and recommends the mandating of warning labels on containers and at the point of sale.

Recommendation 25:
That a suitably worded warning message about the risks of consuming alcohol while pregnant be mandated on individual containers of alcoholic beverages and at the point of sale for unpackaged alcoholic beverages, as support for ongoing broader community education.

4.79 *Standard 1.2.4* exempts alcoholic beverages from requiring an ingredient list on the label. The ingoing ingredients for alcoholic beverages (beer, wine, spirits) are substantially transformed during the fermentation process and thus an ingredient list of ingoing ingredients would not accurately represent the components of the food as purchased. However, alcoholic beverages are required to comply with *Standard 1.2.3*, which requires the declaration of the presence of allergens and provision of mandatory warning and advisory statements.

4.80 While warning messages, either of a general or specific kind, raise the controversies discussed in the previous paragraphs, the provision of energy and nutrition information on alcohol containers raises a quite different and distinct issue. Here the question is not one of providing often contested advice on the dangers of alcohol, but simply the provision of factual information that could be relevant to a person's health or weight management. The current exemption from reporting standard nutrition information (except if a nutritional claim is made) means that consumers lack information at the point of sale about the nutrient content of alcoholic beverages.

4.81 The fact that alcoholic beverages do not currently declare energy content or provide nutrient information is at odds with the requirement for other beverages to provide this information. Submissions from numerous health agencies expressed dissatisfaction with this situation and supported the inclusion of additional nutrition information on alcohol labels.[155] However, the Panel rejects the view that alcohol products like all other foods should carry a NIP. The fact that alcoholic beverages contain few nutrients of concern (other than alcohol) could mean that NIPs might be seen as conveying quite positive messages about alcohol. Indeed, they could imply that it is a healthy product. Therefore, to prescribe NIPs on all alcoholic products could be counterproductive.

4.82 However, the provision of energy content deserves consideration given the energy density of alcohol as a nutrient. It is estimated that 6.4% of Australian adult males' and 3.4% of females' energy intake comes from alcoholic beverages.[156] These figures point to the desirability of providing energy information on alcoholic containers. It has been noted that 'it is possible that the current preoccupation with weight gain in many developed countries, including Australia, might be a more compelling motive for behaviour change than alcohol-related injury risk'.[157] The Panel favours the provision of energy information as this would assist people wanting to manage their energy intake.

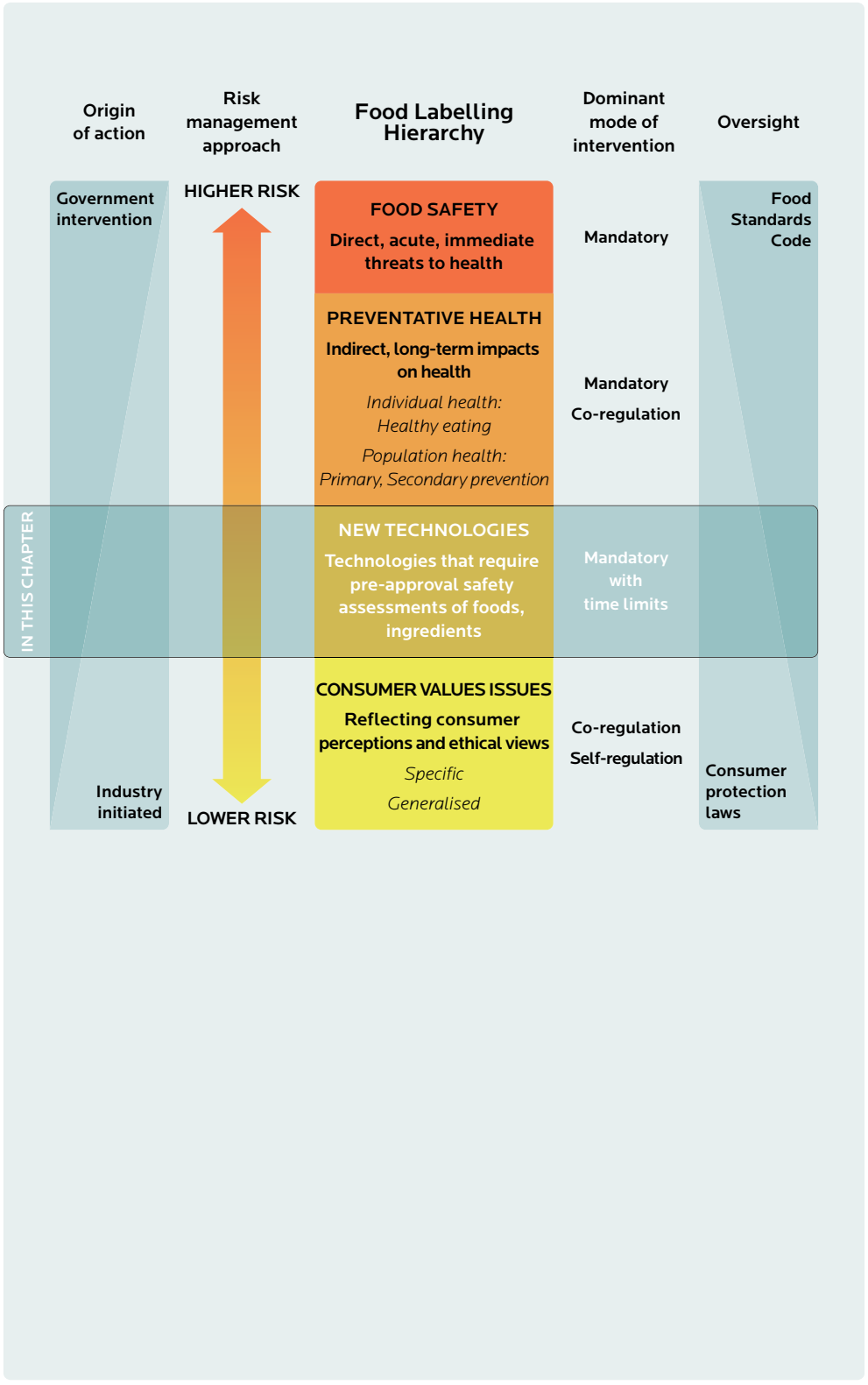
Recommendation 26:
That energy content be displayed on the labels of all alcoholic beverages, consistent with the requirements for other food products.

4.83 In the context of existing labelling regulations, pre-mixed alcoholic beverages represent an anomaly. Although beverages such as milk or carbonated beverages are required to abide by all the nutrition labelling requirements of the Code, FSANZ has advised that the addition of alcohol renders them exempt from the obligation to include a NIP, other than if they carry a nutrient content or nutrition claim. This is unsatisfactory for several reasons. Firstly, while the exclusion of nutrition information on straight alcoholic beverages can be justified because provision of this information may mislead consumers about the health status of the product, this special condition does not generally apply to pre-mixed alcoholic beverages. Secondly, Australian research has shown that more than three-quarters of 17–25 year olds, significant consumers of such drinks, desire the provision of nutrition and ingredients information on alcoholic beverages.[158] Finally, the NIP labelling exemption for pre-mixed alcoholic beverages constitutes an uneven playing field for manufacturers of non-alcoholic beverages who are required to abide by the Code.

Recommendation 27:
That drinks that are mixtures of alcohol and other beverages comply with all general nutrition labelling requirements, including disclosure of a mandatory Nutrition Information Panel.

5

New Technologies


Origin of action
Risk management approach
Food Labelling Hierarchy
Dominant mode of intervention
Oversight
Government intervention
HIGHER RISK
FOOD SAFETY
Direct, acute, immediate threats to health
Mandatory
Food Standards Code
PREVENTATIVE HEALTH
Indirect, long-term impacts on health
Individual health: Healthy eating
Population health: Primary, Secondary prevention
Mandatory
Co-regulation
IN THIS CHAPTER
NEW TECHNOLOGIES
Technologies that require pre-approval safety assessments of foods, ingredients
Mandatory with time limits
CONSUMER VALUES ISSUES
Reflecting consumer perceptions and ethical views
Specific
Generalised
Co-regulation
Self-regulation
Industry initiated
LOWER RISK
Consumer protection laws

New Technologies

5.1 New technologies in food production, particularly those that require safety assessments of the foods produced or processed by such technologies, present a unique set of issues and there is justification for a distinct approach to labelling requirements for foods produced using these technologies. It is inevitable that technological advances in food production will continue to emerge over time and a principles-based approach is needed to ensure consistent and effective food labelling regulation. In keeping with the Panel's hierarchy of food labelling issues outlined in Chapter 3: Principles and Criteria, there is a strong rationale for time-limited, mandatory interventions by government in relation to the labelling of foods produced with new technologies.

5.2 The application of technology in food production is as old as cultivation. The Ancient Egyptians are credited with making significant advances in the plough for tilling soil, as well as developing novel ways to irrigate the desert lands. Selective and cross breeding is also regarded as being an agricultural practice that is thousands of years old. However, over the past century, perhaps for the first time in history, humans have begun to question the role of some technological advances in relation to food. Beginning with pasteurisation at the beginning of the 20th century, to fluoridation of the water supply in the mid-20th century, to mass-produced processed food and, most recently, fortification, there has been an emerging concern with man 'interfering' with the food supply. However, with the passage of time most of these advances have become readily accepted by the population at large as being safe and indeed important from a public health perspective.

5.3 As reflected in the submissions to and consultations with the Panel, concerns over new technologies were focused primarily on biotechnology and, to a lesser extent in descending order of preference, on nanotechnology and irradiation. The genetic engineering of food gave rise to more submissions and more comments in consultation than any other single issue. It is difficult, however, to gauge the extent to which such attention is representative of the population at large. In the FSANZ *Consumer Attitudes Survey 2007*, when unprompted 2.9% of Australian and 8.7% of New Zealand respondents identified genetically modified (GM) foods as being of concern.[159] When prompted, however, 25.3% of Australian and 28.8% of New Zealand respondents identified GM foods as being of concern and rated their concern on a seven point scale from 1 (not at all concerned) to 7 (extremely concerned) as 5.97 for Australians and 6.13 for New Zealanders.[160] These results indicate that while GM foods are not 'top of the mind' in relation to food safety, when prompted a significant minority of consumers rates their level of concern as high. The most recent survey of attitudes to biotechnology carried out for the Australian Government Department of Innovation, Industry, Science and Research suggests that 27% of the population find unacceptable

the modifying of genes of plants to produce food and the willingness to eat GM food averaged between 3.9 to 5.0 on a scale of 1 to 10 (1 being unwilling, 10 willing), the result dependent on the particular type of GM food named in the questionnaire.[161] These results suggest to the Panel that there is considerable unease in the community over GM foods.

5.4 The Panel considered new technologies as a distinct category of issues that require a distinct labelling response. The Panel did this in part because the world is likely to see many more new technologies in food production in the near future, the consumption of meat and other products (e.g., milk) from cloned animals being one example. There would be much to be said for developing 'an overarching policy to label all foods derived using emerging technologies' as proposed by CHOICE in its submission to the Review 'so that in future ad hoc decisions on innovative technologies could be avoided and a systematic food regulatory approach could be applied'.[162]

The Current Situation

5.5 Irradiation is a method of food preservation achieved through exposing certain types of food to a source of ionising energy. It has been used as a food safety strategy for over 30 years. In Australia and New Zealand, irradiation is prohibited unless specific permission is granted. *Standard 1.5.3* sets out the permitted sources and levels of radiation and lists the foods permitted to be irradiated and the consequential labelling requirements. Currently, only herbs and spices, herbal teas and some tropical fruits have been approved to be irradiated. In the 1980s, the Codex Alimentarius Commission (the Codex Commission) recommended mandatory labelling of irradiated foods to enable informed consumer choice. Information provided by FSANZ indicated that more than 40 countries allow the use of irradiation for food, with varying labelling requirements. Australia and New Zealand have adopted the European Union approach, where any food that contains an irradiated product must be labelled accordingly, while in the USA only where the whole food has been irradiated does it need to be labelled.

5.6 GM ingredients come from crops and other sources that have been modified using gene technology. GM ingredients and processing aids have been used in food production in the Australian and New Zealand market place for about 10 years. All GM ingredients intended for sale must be subjected to safety assessments by FSANZ. *Standard 1.5.2* sets out the labelling requirements for foods produced using gene technology. This Standard requires that food be labelled GM if novel deoxyribonucleic acid (DNA) or novel protein introduced by gene technology can be shown to be present in the final food or the food has altered characteristics as specified by the Code. However, if GM ingredients or processing aids are used in the manufacturing process and there is no detectable residual genetic material or protein of the source in the final product and the food has no altered characteristics, genetic modification labelling is not required. A further

exemption is that flavours that contain GM material but do not exceed a level of one part in a thousand in the final food do not require genetic modification labelling. A final exemption is that if a food, ingredient or processing aid includes unintentional traces of GM at 1% or less by weight per ingredient, it does not require genetic modification labelling. In addition, foods produced from animals fed GM products (i.e., animal foodstuffs) do not require genetic modification labelling.

5.7 The international position on the labelling of GM foods is not particularly helpful. For nearly two decades the Codex Commission has been unable to reach agreement on the labelling of food produced by genetic modification technology. The range of policy options that emerged across different countries led the Codex Commission to establish a working party in 1996 tasked with resolving the challenges and barriers that were emerging. One of the outcomes was identification of seven policy approaches to the labelling of foods where gene technology has a role to play. These policy options ranged from no specific labelling requirements to a mandatory requirement where all foods derived or containing ingredients derived from organisms produced using gene technology are required to be labelled.[163] Despite intensive work over the past 14 years there has been little progress.

5.8 In the USA and Canada, the approach is that the product rather than the process should be assessed. Insofar as a GM product is adjudged safe, no prescriptive labelling as to the process is required unless there are certain changes from the traditional counterpart, including changes with the potential to affect human health, such as allergens. Both countries do have guidelines for voluntary labelling. On the other hand, the European Union goes somewhat further than Australia and New Zealand in requiring genetic modification labelling on all GM foods or ingredients, irrespective of the presence of novel DNA or protein, with a 0.9% permitted unintentional level.[164] Thus the labelling encompasses highly refined foods derived through gene technology such as sugar or vegetable oil, which are exempt from labelling requirements in Australia and New Zealand.

5.9 Nanotechnology refers to a technology that deals with microscopic particles sized 100 nanometres or less (a nanometre being one billionth of a metre). The application of this science to food is still very much in the research and development phase and there are few if any regulatory frameworks in place in any country to address this technology. FSANZ has advised the Panel that it is not aware of any food use of manufactured nanotechnology substances in Australia and New Zealand, nor has it received any application for the use of nanotechnology in food[165] and there is as yet no standard for nanotechnology in the Code. However, a recent inventory of consumer products has identified that about 10% of nanotechnology-based consumer products worldwide are foods, beverages and food packaging products.[166] In May 2010, the European Union Parliament's Environment Committee agreed that foods 'produced by nanotechnology should undergo specific

risk assessment before being put on the European market and should not be included on the European Union's list of novel foods'.[167]

Overall Approach

5.10 In pursuing an overarching policy for labelling foods produced using or treated by new technologies, the Panel has noted the defining and distinctive nature of these technologies. What sets these technologies apart is that their proposed use in the food production chain automatically triggers a pre-market safety assessment of the foods or ingredients produced or treated through the use of such technologies. Unlike novel foods or novel food ingredients, neither GM technology nor irradiation introduces food or ingredients that have not been traditionally used by the broad community in Australia or New Zealand. Rather these new technologies are used in the production and processing of traditional foods. But as with novel foods or ingredients, the Panel believes the focus should be on the food or ingredient not on the process. The new technology is of interest insofar as it has in any way transformed the nature of the food.

5.11 In relation to irradiation and genetic modification, the approved foods have been subject to stringent safety assessments and the science appears robust and has been peer reviewed. It has been alleged that FSANZ has been too accommodating in its acceptance of GM food, having 'the dubious honour of being only one of a couple of regulators from around the world that has approved every single application it has received for a GM product'.[168] Yet an independent peer review concluded in 2008 that 'the GM food safety assessment process employed by FSANZ is scientifically rigorous, conducted on a case-by-case basis and is one of the most, if not the most transparent in the world'.[169] There is no evidence that consumption of either irradiated food or GM food produces any immediate detrimental effects in humans, nor has any convincing evidence been advanced to indicate potential future harm to humans. The Australian Academy of Science concluded in 2007 that 'GM products have been in several foods for many years and consumed without any substantiated evidence of ill effects on health'.[170]

5.12 These technologies have only been introduced into the food production chain over the past generation. The Panel believes that all foods produced from or treated by major new technologies (i.e., new technologies which trigger automatic safety assessments), should, as a general principle and subject to scientific evidence, require mandatory identification for a period of 30 years from the time of their introduction. At the end of that period they will have been involved in the human food supply chain for a generation. Over this period the labelling should be subject to regular monitoring. At the end of the 30 year period and with the accumulated experience of a generation, the mandatory requirement should be reviewed.

Recommendation 28:
That as a general principle all foods or ingredients that have been processed by new technologies (i.e., all technologies that trigger pre-market food safety assessments) be required to be labelled for 30 years from the time of their introduction into the human food chain; the application of this principle to be based on scientific evidence of direct impact on, or modification of, the food/ingredient to be consumed. At the expiry of that period the mandatory labelling should be reviewed.

Labelling of GM Foods

5.13 This still leaves the problem with GM foods of exactly what is to be mandatorily labelled. Views ranged across a wide spectrum, but three groups can be identified. First a group, many of whom showed a marked hostility to genetic engineering and all its applications, at least as regards food, who argued for complete labelling of GM foods irrespective of where in the food chain the intervention takes place and irrespective of whether or not the food has altered characteristics or contains novel residual material. One typical submission urged 'a "process-based" labelling where all ingredients fully or partly derived from GM crops or GM based processes are labelled as genetically modified'.[171] A second group, while not evincing the same antipathy to GM technology, indeed in some cases citing its benefits, nevertheless argued that 'the precautionary principle in relation to long-term health effects should be given considerable weight in relation to GM products'.[172] This group advanced various levels of comprehensiveness in genetic modification labelling. Finally, there is industry itself which sees GM technology as simply one of a number of technologies used in food production and therefore finds 'the current mandatory labelling regime ... inefficient'.[173] However, industry accepts that it 'is not completely impractical' and concedes that the existing labelling requirements comprise 'cost effective compliance strategies'.[174]

5.14 The debate is focused around the adequacy of the present genetic modification labelling, particularly around the exemptions provided for in *Standard 1.5.2*. Five particular issues were raised: firstly, the adequacy of the rules on unintentional presence; secondly, the issue of foods and ingredients produced using GM technology but in which novel DNA or protein has been refined away and is undetectable in the final food or ingredient; thirdly, the reason for exempting flavours; fourthly, the non-recognition of the use of GM somewhere in the food chain, for example GM foodstuffs fed to animals, but again undetectable in the final product; and finally, the fact that the general exemption from most forms of labelling of food that is prepared and sold from food premises and vending machines includes genetic modification labelling.

5.15 The most divisive, and in some ways the most critical, issue concerns food or ingredients produced using gene technology but in which novel DNA or protein has been refined away and is not detectable in the final product. In this area a number of countries, particularly those in the European Union, have more demanding requirements than Australia and New Zealand. The case for Australia and New Zealand having similar rules in this matter as the European Union was advanced in many submissions and in the consultations. However, the Panel finds it difficult to sustain a case for mandatory labelling of a food or ingredient as GM which contains no detectable novel DNA or protein. This would be to label the process and not the food. Moreover, it would be difficult to enforce as no scientific test can identify novel DNA or protein if it is not present.

Recommendation 29:
That only foods or ingredients that have altered characteristics or contain detectable novel DNA or protein be required to declare the presence of genetically modified material on the label.

5.16 Similarly, if the final food or ingredient has no altered characteristics and no detectable residual genetic material or novel protein, it seems unnecessary to pursue GM events down the food chain (e.g., animals having eaten GM feed). This would be unduly onerous, not justified by the present state of knowledge and is required by no country in the world.*

5.17 Nor does the Panel believe a case can be sustained for changing the present threshold level for unintentional presence — no more than 1% — which is among the most stringent in the world. However, the Panel is of the opinion that the unintentional presence rules need to ensure that an event is purely adventitious and not one designed to get around the rules. Therefore, in order to ensure the integrity of the unintentional presence provisions, any detection of an unintentional event should trigger a monitoring of that food or ingredient for a period of time.

Recommendation 30:
That any detection of an adventitious genetically modified event be followed by a period of monitoring and testing of that food or ingredient.

5.18 Flavours are at present excluded from the genetic modification labelling requirements if the flavours are present in the food or ingredient in a concentration of no more than 1 gram per kilogram. Despite this threshold, in order to have a consistent approach to genetic modification labelling,

* In the European Union, genetic modification labelling regulations apply to animal feed, but not to the products; for example not to meat and eggs of animals fed GM food.

if flavours contain detectable novel DNA or protein the Panel can see no reason to exempt them from the labelling requirements.

Recommendation 31:
That foods or ingredients with flavours containing detectable novel DNA or protein not be exempt from the requirements to declare the presence of genetically modified material on the label.

5.19 Finally there is general exemption from labelling requirements of food intended for immediate consumption which is prepared and sold from premises and vending machines and which includes genetic modification labelling. Elsewhere in this Review, the Panel has recommended a modification of this general exemption as regards nutrition labelling, at least for large food outlet chains and vending machines. The Panel believes consideration should be also given to genetic modification labelling in these outlets and machines when the food or ingredient has changed characteristics or contains detectable novel DNA or protein.

Recommendation 32:
That foods or ingredients that have been genetically modified and would require declaration if labelled be declared on menu/menu boards or in close proximity to the food display or menu in chain food service outlets and on vending machines.

5.20 Given the importance attached to the detectability of novel DNA or protein as the basis for genetic modification labelling in the Australasian regime, it is imperative that requirements for testing be aligned with agreed international testing protocols. Some concerns were expressed to the Panel about the adequacy of testing and surveillance protocols for GM identification and the availability of laboratories in Australia and New Zealand to do the necessary work. It should be unnecessary to state that in this respect Australia and New Zealand should aim to achieve world best practice.

Recommendation 33:
That governments ensure effective monitoring of labelling requirements in the Food Standards Code relating to genetically modified foods or ingredients through support for sufficient Australian and New Zealand laboratories, observing world best practice protocols, and with the necessary resources and analytical skills.

Irradiation and Nanotechnology

5.21 The Panel believes that in the light of Recommendation 28, mandatory labelling requirements prescribed for irradiated foods should be reviewed. People have now had 30 years' experience of irradiated foods and there appear to be no problems for humans occasioned by the consumption of foods treated with this technology. In 1997, a Study Group convened by the FAO, the International Atomic Energy Agency and WHO concluded that 'food irradiated to any dose appropriate to achieve the intended technological objective is both safe to consume and nutritionally adequate. ... High-dose irradiated foods are indeed as safe as food materials sterilized by thermal processing, which humans have been eating for more than a century'.[175] In the years since the Study Group reported, its conclusions have not been controverted and indeed have been widely endorsed by international and national bodies.

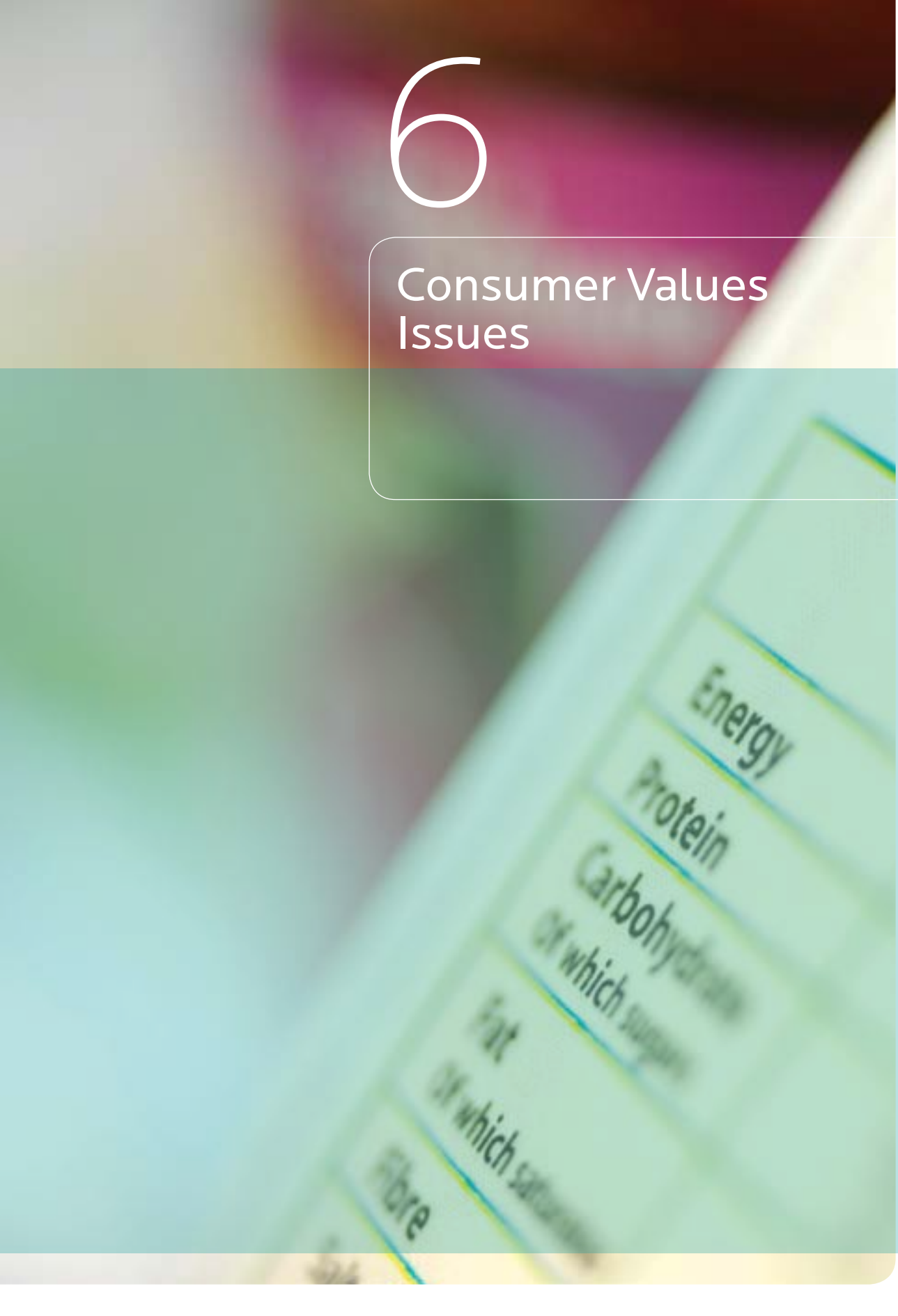
Recommendation 34:
That the requirement for mandatory labelling of irradiated food be reviewed.

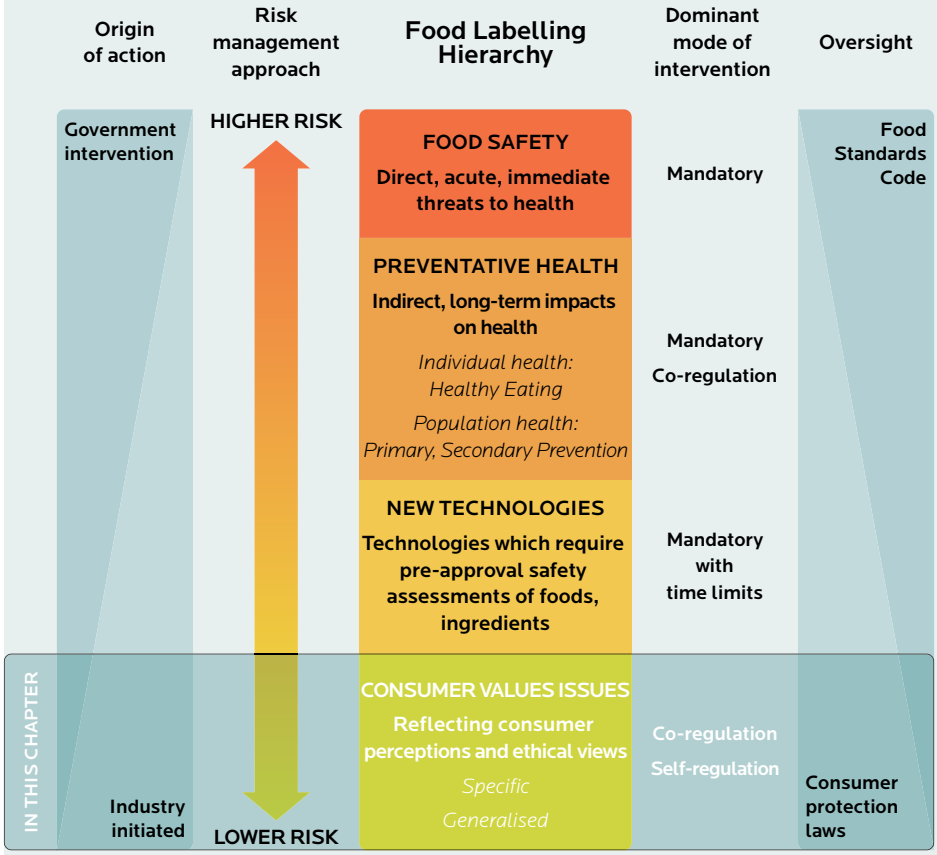
5.22 While the extent of use of nanomaterials in the Australian and New Zealand food supply appears at this stage to be minimal and adequate risk assessment techniques undeveloped, the Panel would urge FSANZ to give nanotechnology a high priority. In the years ahead it is likely to become as contentious an issue in the food supply as gene technology. The Panel acknowledges the view expressed by the Australian Government Department of Innovation, Industry, Science and Research that 'there is a range of complex issues that need to be considered in determining the purpose, appropriateness and value to the consumer of labelling of nano-materials, including food and food packaging',[176] but this should not be used as an excuse for delay. If the regulator shows hesitancy or uncertainty or is bypassed by events then this will weaken its authority. As noted in one submission 'the failure to identify the presence of new tech products or the introduction of a labelling regime that leaves uncertainty as to the presence of such novel ingredients, can serve to undermine the credibility of the regulator'.[177]

Recommendation 35:
That Food Standards Australia New Zealand and other relevant bodies develop as a matter of urgency a standard for regulating the presence of nanotechnology in the food production chain, consistent with the recommendations in this Report relating to new technologies.

6

Consumer Values Issues




Origin of action
Risk management approach
Food Labelling Hierarchy
Dominant mode of intervention
Oversight
Government intervention
HIGHER RISK
FOOD SAFETY
Direct, acute, immediate threats to health
Mandatory
Food Standards Code
PREVENTATIVE HEALTH
Indirect, long-term impacts on health
Individual health: Healthy Eating
Population health: Primary, Secondary Prevention
Mandatory
Co-regulation
NEW TECHNOLOGIES
Technologies which require pre-approval safety assessments of foods, ingredients
Mandatory with time limits
IN THIS CHAPTER
CONSUMER VALUES ISSUES
Reflecting consumer perceptions and ethical views
Specific
Generalised
Co-regulation
Self-regulation
Industry initiated
LOWER RISK
Consumer protection laws

Consumer Values Issues

6.1 Consumers' increasing desire to make food purchase decisions according to their personal values, their perceptions of the world and their ethical convictions brings a further dimension to the food labelling debate. Issues of consumer concern are ever changing. They may be initiated by a small group, but over time may become more widely supported or may diminish in popularity. It is clear from the submissions received by the Panel and the results of both trans-Tasman and international consumer surveys that many people feel strongly about the origins of the food they buy and how and under what conditions it was produced. These have been termed consumer values issues in this Report. The food label is a convenient method to provide consumers with values information at the point of purchase.

6.2 In a democracy, government must respond to citizen concerns and issues raised by representative organisations. The Panel recognised the need to develop an approach to manage the food labelling response to the highly diverse and disparate range of issues identified in surveys and raised in submissions and consultations. Issues most frequently raised, in no particular order, included the welfare of animals, religious beliefs, environmental issues, human rights, methods of production and the country-of-origin of food products.

Categories and Approaches

6.3 Generalised consumer values issues such as human rights, animal welfare, environmental sustainability and country-of-origin labelling (CoOL) were raised in a large number of submissions. These issues apply to a broad range of goods and services and are not limited to food. For example, there may be an argument for green labelling but it is not restricted to food and extends right across productive activity. Similarly with human rights. For these generalised values issues, only a whole of industry, not just a food industry approach, could justify prescriptive labelling. In addition, these generalised values issues defy precise definitions and lack agreed methodologies to guide labelling decisions.* As a general principle, food labelling for such generalised values issues is best left to market responses to consumer demand and is best covered by the consumer protection laws.

6.4 Those issues more directly relating to food production methods and processes, such as 'free range', 'organic' and 'halal', were categorised by the Panel as specific consumer values issues.† These are much narrower

* Common green-related food claims include food miles, carbon footprints and carbon labelling, but as yet there is little consensus.

† These specific values issues sometimes derive from broader generalised issues. A classic example is 'free range'; that is, the way animals are bred for food, which is directly linked to methods of food production, but which is derived from more general concerns for animal welfare.

in application than generalised consumer values issues and it would usually make little sense to apply them outside specific methods and processes of food production. In addition, the very narrowness of specific values claims mean that they lend themselves more easily to precise and agreed definitions. It is possible therefore to conceive of tighter forms of intervention in the case of specific values issues.

6.5 Given consumer interests in such values issues, there are powerful incentives for industry to provide relevant information and thereby ensure effective operation of the market. In essence, if the label claim provides a supplier with a positive point of differentiation in the market, there is a strong incentive for the supplier to adopt such a claim and for consumers to respond. For example, some suppliers may be able to realise a market advantage by highlighting a specific means of production (e.g., 'organic', 'free range'). This tends to be the case when the differentiated product is not the industry norm. The Panel has taken the view that where the market operates efficiently there is no need for mandatory regulation, although in certain cases with specific values issues there may be advantages in developing a prescriptive definitional framework to ensure a level playing field.

6.6 However, unscrupulous suppliers and producers are able to exaggerate or 'polish' positive claims, thus undermining a level playing field to the disadvantage of other suppliers or producers. In addition, in those instances where disclosure could harm sales, the food label is unlikely to contain the information desired by consumers unless it is required to do so. In both these situations, self-regulatory measures may need to be introduced or escalated to ensure the consumer is provided with consistent and accurate information. In the extreme case, government regulation may be necessary.

6.7 In addition, apart from market failure there may be structural factors that militate against self-regulatory options. If the industry is highly fragmented, it will be more difficult to engage the industry around self-regulatory codes. Again, when there are few or no incentives for industry to comply with self-regulation or in less mature industries where there may not be the resources to develop self-regulatory approaches,[178] other methods of intervention may have to be considered.

6.8 Despite these qualifications there is much to be said for self-regulation in the management of consumer values issues, particularly where 'there are clearly defined problems but no high risk of serious or widespread harm to consumers'.[179] The ACCC considers that self-regulation can provide a cost-effective means of addressing consumer issues by being flexible and sensitive to market circumstances, providing ownership to industry members over the regulation of their industry, by setting standards for best practice in the industry and by enabling speedy resolution of intra-industry issues and consumer complaints. The Chair of the ACCC also points out that an advantage of industry codes is that they can set performance benchmarks

higher than can be achieved through black letter law.[180] The categories and approaches for consumer values issues are set out in Table 2.

Table 2: Categories of consumer values issues

Categories	Examples	Dominant mode of intervention	Escalation of intervention
Specific values issues			
Food production	– Free range – Organic	Industry-based initiatives that are monitored for effectiveness	Evidence of market failure or defects in particular self-regulatory mechanisms should lead to more effective self-regulatory mechanisms or possibly referencing in the Food Standards Code or ultimately mandatory regulation.
Process and preparation	– Religious requirements – Other dietary choices		
Generalised values issues			
Environment	– Deforestation – Water management	Market response	Rely on consumer protection laws
Animal welfare	– Palm oil (orangutan habitat) – Abattoir practices		
Human rights	– Child labour – Working conditions		
Country of origin labelling			

6.9 It is important to consider a range of regulatory mechanisms, particularly self-regulatory mechanisms, that can cater to the nature of the values issues and the structures of the markets. These include voluntary codes of practice, certification, agreed standards or mandated requirements. These different mechanisms are triggered by differing market conditions, have different definition setting processes and differing levels of consumer acceptance. Governance conditions, compliance levels and the opportunity for effective enforcement also differ with each mechanism.

6.10 Voluntary codes of practice arise principally through industry agreement. While being voluntary in nature, such approaches can be beneficial where there is a unified industry view as to the role and importance of the issue. However, adoption of and compliance with such codes may be variable and this can undermine consumer confidence in voluntary codes.

6.11 A second option is certification, which occurs where an independent organisation provides industry with authority to support a values proposition. This is a particularly useful way of tackling generalised values issues, with the relevant bodies concerned (e.g., the Rainforest Alliance or the Royal Society for the Prevention of Cruelty to Animals (RSPCA)) providing certification. This approach may provide certain marketing advantages with particular special interest groups. Consumer confidence in such certification will depend on their trust in the endorsing organisation and its capacity to monitor and enforce the claims processes.

6.12 A further mechanism is the setting of an agreed standard to provide definitional clarity where there has often been multiple definitions and consumer confusion. This approach is particularly relevant to specific values issues where there is potential for precise and agreed definitions. An agreed standard is based on extensive stakeholder consultation and has the advantage that it can be called up in regulations or legislation. There is the potential for a strong governance arrangement, hence fostering consumer trust in the process.

6.13 Government intervention is required in situations where the market is not capable of effective self-regulation. In instances of market failure, incorporation of mandatory requirements within the Code or in appropriate consumer protection legislation will ensure adoption and enforcement of a clearly defined values claim. This spectrum of approaches, together with the key characteristics of the varying interventions, is outlined in Table 3.

Table 3: Regulatory approaches for values-based claims

	Industry-initiated			Government-initiated
	Voluntary Code of Practice	**Certification scheme**	**Agreed standard**	**Mandated**
Trigger	Industry agreement	Marketing benefit to align with specific organisation	Desire for definitional clarity	Market failure
Definition setting	Industry (possibly with stakeholders)	Generally industry and non-government stakeholders	Stakeholder consultation	Government
Governance	Weak	Moderate	Strong if included in regulation/ legislation	Strong
Consumer trust	Low	Moderate	High	High
Compliance mechanisms	Variable	Reliance on traditional consumer protection avenues	Can be called up in regulations/ legislation	Legislative sanctions

Industry-Initiated Approaches

6.14 Industry-initiated self-regulatory options can provide the first response to a demand for a regulated approach to many values issues of concern to consumers. The various self-regulatory approaches to consumer values issues have various strengths and weaknesses, measured by the degree of consumer trust, the strength of governance and the effectiveness of compliance mechanisms. If a voluntary industry code proves unworkable or inadequate, certification schemes or agreed standards may provide effective alternatives to managing industry-initiated values-based claims.

6.15 Voluntary codes of practice are the simplest response by industry to the management of values-based claims and are particularly suited to situations where a group of industry players are, or can be, aligned to common values. A practical example of a code of practice is the Australian Olive Association Code.[181] This code ensures a consistent approach is applied by signatories in relation to (among many other factors) label claims.

6.16 Voluntary codes of practice can serve as an effective means for industry engagement and for establishing a level playing field for participating players. Moreover, codes of practice can play an effective role as the 'first step' towards a more developed and rigorous self-regulatory approach, such as certification schemes or agreed standards. In some instances, other industry sectors (e.g., food retailers) may require adherence by their suppliers to a code of practice, hence providing industry-wide governance. However, by their very nature, voluntary codes are only applicable to signatories and as such they are limited in scope and effectiveness. Non-signatories to a code may 'hijack' a codified term and use it more liberally, thus making a mockery of the code of practice.

6.17 Industry certification schemes involve the use of a values claim linked to an accreditation/certification program (e.g., relating to fair trade, animal welfare, religious concerns) and are particularly relevant to generalised consumer values issues. Whereas voluntary industry codes of practice are essentially dependent on the industry itself, certification adds an additional player, the certifier, to the self-regulatory system. In general, the use of certification schemes requires payment to an overseeing body in return for auditing of the supply chain and use of the licensed property — traditionally a logo. The accreditation program provides the rigour and supply chain protocols to validate the values claim being made. This approach is well suited to manufacturers who can realise a clear marketing advantage in aligning a brand to a specific organisation espousing a particular value or philosophy, such as a non-government organisation (NGO) or religious organisation. For NGOs, certification provides an opportunity to convey authoritative advice relating to their values, while also providing a source of revenue.

6.18 Consumers generally need to make their own assessment of the reliability of the accrediting body. The use (and misuse) of certification schemes is governed by existing consumer protection laws in terms of 'misleading or deceptive' provisions. Their use is supported by litigation, if appropriate, where a trade-marked device or claim is used contrary to, or in the absence of, a contract between the certifying body and the supplier.

6.19 Examples of certification schemes being used on food labels in Australia and New Zealand include those related to environment/sustainability (Rainforest Alliance, Fairtrade Foundation, Marine Stewardship Council (MSC)), religious certification (Halal, Kosher) and country of origin (New Zealand made) (see Explanatory Box 14).

Explanatory Box 14: Examples of Certification Schemes

6.20 The role of such schemes in effectively and accurately communicating values claims hinges strongly on the credibility of the certifying body and the extent to which such schemes do not become more of a revenue raising option for the certifying agency than a truly independent auditing or verification process. However, when such schemes are used with integrity and in combination with consumer-directed communication, they can lead to a broad understanding of the values-based claim amongst special interest consumer groups, even if not fully understood by the population at large.

6.21 Agreed standards utilise agreed terminology for values-based claims that enable manufacturers to make claims within a framework of agreed definitions. They are particularly suited to consumer values issues directly linked to food production methods or processes, where precise and agreed definitions are possible. Such an approach would be appropriate where values-based claims are already in use but ill-defined and where the lack of a clear definition has the potential to confuse or mislead consumers and prevent a level playing field for industry. This option serves to restrain the less scrupulous and thus ensure a level playing field for all suppliers and accurate and consistent information for consumers. Underlying such a definition would be a defined process or protocol that provides a verifiable 'audit trail', ensuring that the promise made by the claim is delivered.

6.22 Recent developments in relation to the use of the word 'organic' provide an example of an 'agreed standard'. 'Organic' (or bio-dynamic) is a positive claim that responds to consumer demand for this information. An organic standard is particularly relevant for a number of consumers given the

importance that they attach to concerns over the adequacy of the maximum residue limitations in relation to such inputs as pesticides, hormones and antibiotics. Several different definitions of 'organic' had evolved in the Australian marketplace, causing confusion for consumers and lack of confidence in the value claim. Australian Standard *AS6000-2009 Organic and biodynamic products* was developed to determine a single definition of 'organic'. This process involved a consultative committee of 18 bodies, including consumer groups, broad industry groups, organic/biodynamic industry groups and State and Federal governments. The process also drew on existing frameworks such as the Codex, International Organization for Standardization (ISO) and the existing Australian export standard, *National Standard for Organic and Bio-Dynamic Produce*. This agreed standard was developed and refined with rigor and definitional precision without prescriptive action by government, providing a model of how definitions for values claims can be determined and implemented.

6.23 The Panel considers the development of the Australian Standard *AS 6000-2009 Organic and biodynamic products* as an effective case of how a standard, which includes food labelling provisions, can be developed. In its submission, the ACCC reported that when developing the Standard: 'Input was received from relevant stakeholder groups, including industry, consumers, retailers and regulators. As a result of the rigour and transparency of the drafting process, this standard is likely to be a useful reference point when determining whether a product is organic.'[182] However, it is worth noting there is not full industry support of the new standard. Some argue that a competing standard *National Standard for Organic and Bio-Dynamic Produce* (2009, edn 3.4) is a more effective Standard. As one submission, critical of AS 6000 noted: 'The Standards Australia Organic Standard has NO [sic] review process, nor a body which will host the Document, nor a body which will negotiate with International trading partners.'[183] The Panel finds it disappointing that despite some years of effort and negotiation, unanimity on an agreed national standard does not appear to have been secured. Within New Zealand, there is also an organic standard (NZS 8410:2003) as well as a number of certifying bodies.

6.24 Agreed standards are not law, but there are situations where regulation may be used to underpin a standard, providing legislative backing to ensure the standard is enforced.* An option is thus for the Code to adopt, by reference, appropriate agreed standards definitions (where they exist) for specific

* An example of how Australian standards can be used as a pathway to national regulatory harmonisation is the widely accepted and referenced Australian standards for building design and construction. Approximately 100 building design and construction standards are primary reference documents in the Building Code of Australia (BCA). These standards provide 'deemed to satisfy' solutions for regulatory compliance. The BCA is given legal effect by legislation in each State and Territory, subject to some variations in its provisions. The aim of the BCA is to enable the development and maintenance of standards in the public interest, in the areas of structural sufficiency, safety, health and amenity. Similarly, Australian lawmakers have made use of Australian/New Zealand Standard 3000, 'the Wiring Rules', when regulating to ensure safety and effectiveness in electrical installation and maintenance.

values-based claims with the requirement that if a particular claim is made on the label the production method must have satisfied this standard. For example, if the definition of 'organic' in the agreed standard was not consistently adopted, reference to AS 6000-2009 in the Code would remove possible market ambiguity.

6.25 Should agreed standards not be referenced in the Code, there is the danger that such well-developed values-based definitions relating to specific food production methods and processes could be overlooked by some manufacturers or producers. They may choose to operate outside the 'agreed definitions' and use the same or similar terms but with their own interpretation as to meaning. They may also use definitions that have legitimacy in another country, but their use in Australia or New Zealand could cause confusion.

Recommendation 36:
That Food Standards Australia New Zealand consider adopting, by reference in the Food Standards Code, values-based definitions and/or standards relating to specific food production methods and processes, if requested by industry, to achieve consistency of definitions.

6.26 Despite some disappointments over industry division in relation to the agreed organic standard, an agreed standards approach may be warranted in relation to other claims that relate to specific food production processes or methods. These include animal-based production methods such as 'barn laid' in the case of eggs, 'free range' in the case of eggs and chicken meat or 'sow stall free' in the case of pig meat production. Numerous consumer and industry submissions identified the lack of clarity in the marketplace around such terms. The Panel identified at least six different schemes for classifying free range eggs in Australia. Both here and overseas, frameworks are in place (such as the *Eggs (Labelling and Sale) Act 2001* (ACT), the *Egg Industry Act 2002* (Tas), State and Federal animal welfare legislation and assorted European Union directives[184]), which could inform the development of agreed standards (such as an Australian or New Zealand standard). The Panel is of the opinion that there is merit in exploring the standardisation of terms for poultry products such as 'free range', 'barn laid' and 'caged', and possibly 'sow stall free' in the case of pig meat.

Recommendation 37:
That the relevant livestock industries consider the benefit of establishing agreed standards under the auspices of Standards Australia or Standards New Zealand for terms related to animal husbandry (e.g., 'free range', 'barn laid' and 'caged' in the case of poultry).

6.27 Halal and Kosher are two religiously based specific consumer values claims relating to food preparation and production processes. At this time, alert and informed communities and monitoring by authoritative religious bodies appear to provide the discipline necessary for effective self-regulation. Additional regulation may be considered in the future if monitoring indicates that this self-regulatory approach is ineffective.

6.28 In judging the effectiveness of industry-initiated self-regulatory approaches to consumer values issues, a range of criteria needs to be considered. The first set of criteria relates to market characteristics, such as the ability of a proposed approach to cover the whole industry. Without comprehensive coverage, the mechanism cannot guarantee a level playing field. Consideration also needs to be given to the degree to which adequate and effective stakeholder consultation can be undertaken. In developing an effective self-regulatory option, it is vital that there be involvement and support of all key stakeholders, which in many cases could involve government. Moreover, any self-regulatory code will need to consider the ability of the mechanism to provide clear and tangible incentives for industry participants. In some cases, such an incentive could be simply to demonstrate to regulators that there is no need for regulatory intervention (i.e., a pre-emptive move), while in others, such as certification, it could be for brand or company differentiation. A further criterion to aid decision making as to the appropriateness of self-regulatory codes is whether there already exist clear and adequate definitions within, for example, the Codex, ISO or local or overseas laws.

6.29 The second set of criteria relates to the governance of a proposed approach. This includes the extent to which there is an effective administrative framework. In the absence of a support framework, such as could be provided through NGOs, industry bodies or standards setting bodies, all good intentions at the outset are likely to become unsustainable. Important too is the effectiveness of the machinery for settling intra-industry disputes and responding to consumer complaints.

6.30 Due consideration also needs to be given to the adequacy of sanctions that support the chosen self-regulatory approach and the need to advance to more prescriptive forms of governance as required. Any self-regulatory code without 'teeth' is effectively worthless. Sanctions could include 'naming and shaming', loss of accreditation or referral to the appropriate authority. Finally, any worthwhile self-regulatory approach will need to have effective monitoring and review to ensure it is performing as expected. In some cases (as in the *Marketing in Australia of Infant Formulas: Manufacturers and Importers Agreement*), the monitoring and review function can be undertaken in conjunction with government and included in government reporting. Annual reports of this nature can serve to improve transparency of the process and accountability.

Recommendation 38:
That the value of industry-initiated self-regulatory intervention be recognised and that industry in collaboration with special interest groups further develop and apply a responsive and more structured self-regulatory approach to consumer values issues that incorporates:

a. the role that voluntary codes of practice can play in relation to the evolution of standard definitions for values-based claims;

b. the role that certification schemes can play in effectively communicating values-based messages; and

c. the development of agreed standards through existing frameworks such as International Organization for Standardization, Standards Australia or Standards New Zealand.

Recommendation 39:
That a monitoring regime for self-regulatory measures be established and when evidence of systemic failure to provide accurate and consistent values-based information to enable consumers to make informed choices is found, a more prescriptive mode of regulation is triggered.

Government–Mandated Interventions

6.31 Government-mandated values claims arise where the government needs to intervene in the marketplace due to market failure. As a result of this prescriptive intervention, mandated values claims have the advantage of being legally enforceable. CoOL is the only values-based label claim that is mandated in Australia in the Code.

6.32 CoOL is a particularly contentious issue, much of this arising from the fact that country of origin is a generalised values issue with ramifications far beyond food and where definitional precision is challenging. Indeed, a number of submissions questioned whether mandatory provisions are appropriate. All packaged food sold in Australia must contain a statement on the package that either identifies where the food was made or produced or identifies the country where the food was made, manufactured or packaged for retail sale and that the food is constituted from imported ingredients or local and imported ingredients as the case may be. Revisions to the Code, effective in 2006, extended CoOL provisions to certain fresh produce (seafood, pork, fruit and vegetables).

6.33 In New Zealand there is no mandatory requirement for CoOL, apart from wine, although suppliers may opt voluntarily to supply the information on labels. The Panel does note, however, that the New Zealand Ministry of Consumer Affairs is currently developing a voluntary industry code of practice for CoOL labelling of single ingredient foods.

6.34 This difference between Australia and New Zealand represents the most significant exception to the uniformity of the trans-Tasman food labelling regime. This divergence of approach over CoOL between the trans-Tasman partners is unfortunate given the pursuit by both governments of a closer integration of the two economies, with the shared goal being a single economic market and in particular a seamless food regulatory system. The Panel has been told that a consequence of this difference in approach is that the TTMRA allows food sold in New Zealand with no CoOL to be legally imported into Australia and sold. If this is a regular occurrence it constitutes a way of avoiding the Australian CoOL requirements. The Panel believes it is desirable that both countries have aligned CoOL requirements.

6.35 In Australia, submissions from industry, governments and related agencies, NGOs and consumers were generally supportive of mandatory CoOL. By contrast, New Zealand submissions from government and, with some exceptions, business tended to favour the existing voluntary approach to CoOL. However, consumer submissions from New Zealand mostly desired a prescriptive approach and the FSANZ *Consumer Attitudes Survey 2007* found that 43% of New Zealand consumers surveyed look for CoOL when buying a product for the first time.*

6.36 It is clear from the submissions that CoOL is used by some people as a surrogate for health information; however the Panel accepts that prescriptive requirements for CoOL cannot be sustained on public health grounds. Australia has a robust quarantine inspection regime with a rigorous monitoring system administered by AQIS, whose protocols for inspection assure the safety of imported foods. Indeed, a 2003 Communiqué of the Ministerial Council states that in relation to the 'policy direction on mandatory country of origin labelling of food, Ministers emphasised that this is not a public health and safety issue, as the safety of the food supply is assured through other means'.[185]

6.37 The Panel proposes that market failure is the principal argument that should be advanced for any prescriptive intervention in food labelling in the area of consumer values issues. There are mutual market benefits (to buyer and seller) of promoting food with positive/aspirational origins (e.g., chocolate from Switzerland), yet non-reciprocal benefits from withholding such information when it relates to origins with perceived negative connotations (e.g., food products from countries with poor human rights records). This situation constitutes market failure and the reason for government intervention on the issue of CoOL.

* FSANZ, *Consumer Attitudes Survey 2007*, 2008, p. 50. The comparable Australian figure was 59.1%.

6.38 While CoOL coverage in Australia is comprehensive, there are certain inexplicable exceptions such as beef, lamb and chicken. This anomaly should be addressed.* Some submissions (especially from the seafood industry[186]) go further in suggesting that CoOL be extended to foods sold in restaurants. While arguments were presented in the case of seafood, this would constitute an exception to the general exemption of restaurants from mandatory labelling requirements and the Panel does not accept the arguments as sufficient to justify modifying the exemption.

Recommendation 40:
That Australia's existing mandatory country-of-origin labelling requirements for food be maintained and be extended to cover all primary food products for retail sale.

6.39 The obligations to provide a CoOL statement are in the Code. They follow the principles originally established by the country of origin provisions of the *Trade Practices Act 1974* and are now provided for in the Australian Consumer Law provisions of the *Competition and Consumer Act 2010*.[187] This offers a more comprehensive treatment of CoOL than does the Code, with detailed definitions of a range of origin claims. The Panel believes that it would be better to have CoOL located within a single regulatory framework. The Panel's preference would be to have CoOL regulated through the Australian Consumer Law, subject to it remaining a mandatory requirement. This proposal is in harmony with the recommendations of the Productivity Commission's 2007 *Review of Australia's Consumer Policy Framework* which advocated simplifying consumer laws where overlaps exist.[188] This could be achieved through a consumer product information standard for food, as exists currently for tobacco and cosmetics, both of which require specified information on the package.†

Recommendation 41:
That mandatory requirements for country-of-origin labelling on all food products be provided for in a specific consumer product information standard for food under the *Competition and Consumer Act 2010* rather than in the Food Standards Code.

6.40 The most significant consequential issue raised concerning CoOL related to uncertainty about claims to the 'Australian-ness' of a product. There was

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* The Panel notes that FSANZ is now progressing a proposal (P1011) which considers mandatory CoOL for unpackaged beef, lamb and chicken to address this apparent inconsistency and following recent changes to beef importation arrangements.

† *Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations 1991*, see r. 5(1) — The ingredients in a cosmetic product must be listed: (a) on the container; *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*, r. 7(1) — A retail package ... must be labelled in accordance with [the standard].

widespread concern over the confusing plethora of definitions relating to the Australian nature of the product: 'Made in Australia', 'Product of Australia' and 'Made from Australian and Imported Ingredients'. A Newspoll Survey (April 2010) highlights not only the general confusion in relation to these definitions but demonstrates misinterpretation of the terms. The survey reported that 63% of respondents incorrectly identified the originating source of a product where the term 'Made in Australia' was used.[189] The confusion is compounded by the 'Australian owned' claim and by a flood of 'Australian Made' logos.

6.41 The problem arises in essence from the fact that country-of-origin is a generalised value and the terms can apply across all products not only to food. These terms and their definitions (as summarised in Explanatory Box 15) follow the principles of the *Competition and Consumer Act 2010*. An examination of the terms suggests some of the sources of confusion. The term 'Grown in' produces a clear definition for consumers, but has little room for flexibility as it is effectively an 'all or nothing' option. It is not clear at all what difference there is, as regards food, between 'Grown in' and 'Product of'. The term 'Made from local and imported ingredients', while a pragmatic solution for manufacturers who have to source raw materials locally or from a variety of countries according to seasonality, is unsatisfactory for many consumers.

Explanatory Box 15: Country-of-Origin Claims in Australia

Made in ... (e.g., Made in Australia, Australian Made): For goods that have been substantially transformed in the specified country *and* where 50% or more of the total cost of producing or manufacturing the goods has occurred in that country.

Product of/Produce of ... (e.g., Product of Australia): When the specified country was the country of origin of each significant ingredient or significant component of the goods *and* all, or virtually all, the production or manufacture happened in that country.

Grown in ... (e.g., Grown in Australia, Australian Grown): where each significant ingredient or component of the goods was grown in that country *and* all, or virtually all, processes involved in production or manufacture happened in that country.

Made in ... from local and imported ingredients/Made in ... from imported and local ingredients: This is a qualified claim that can be used where it is not possible for a stand alone 'Made in' claim to be made, either due to uncertainty around the question of substantial transformation and whether 50% costs of production is met or to adjust to seasonal changes in availability of individual ingredients.

6.42 At the heart of the confusion is the 'Made in Australia' claim and the efforts of manufacturers to 'highlight the Australian-ness of their foods'.[190] A consumer can conclude with reasonable confidence that a 'Made in (an overseas country)' claim implies that the bulk of the ingredients and components are sourced from that country or at least overseas. No such conclusion can be drawn from a 'Made in Australia' claim, for that claim can be made if 50% of the costs of production have occurred in Australia and the food has been 'substantially

transformed' in Australia. This definition therefore allows a 'Made in Australia' claim despite most of the ingredients and components having been imported. Furthermore, where there is uncertainty as to whether the 50% or substantial transformation requirements have been met, a qualified claim, typically 'Made [or Packed] in Australia from local and imported ingredients' is allowed, which provides little if any information on the source of the ingredients. The Panel cannot but agree with the National Farmers Federation that 'Australia's current CoOL provisions ... are convoluted and potentially misleading for consumers'.[191]

6.43 As food is ingested and taken into ourselves, unlike most other consumer goods that are just used, naturally consumers are primarily focused on the components and ingredients of foods and not with their substantial transformation, packaging or value adding. The Panel would therefore favour an Australian-origin claim based on the ingoing weight of the various components of the food, excluding water. This new CoOL framework, which would be specific to food, could deliver a workable solution that provides consumers with clarity on the provenance of the ingredients and components of their foods (as opposed to the packaging or manufacturing). At the same time, it could provide manufacturers with a consumer-relevant and understandable set of claims.

6.44 While leaving the fine details of the framework to those with expertise in these matters, the Panel suggests the following as the main elements of a mandatory product information standard for food labelling, where the food label must contain one of the following statements as appropriate:

All packaged foods:

a. 'Made of Australian Ingredients': at least 80% by weight (excluding water) of all ingredients or components of Australian origin;

b. 'Made of Australian and Imported Ingredients': at least 50% by weight (excluding water) of ingredients and components of Australian origin;

c. 'Made of Imported and Australian Ingredients': less than 50% by weight (excluding water) of ingredients and components of Australian origin.

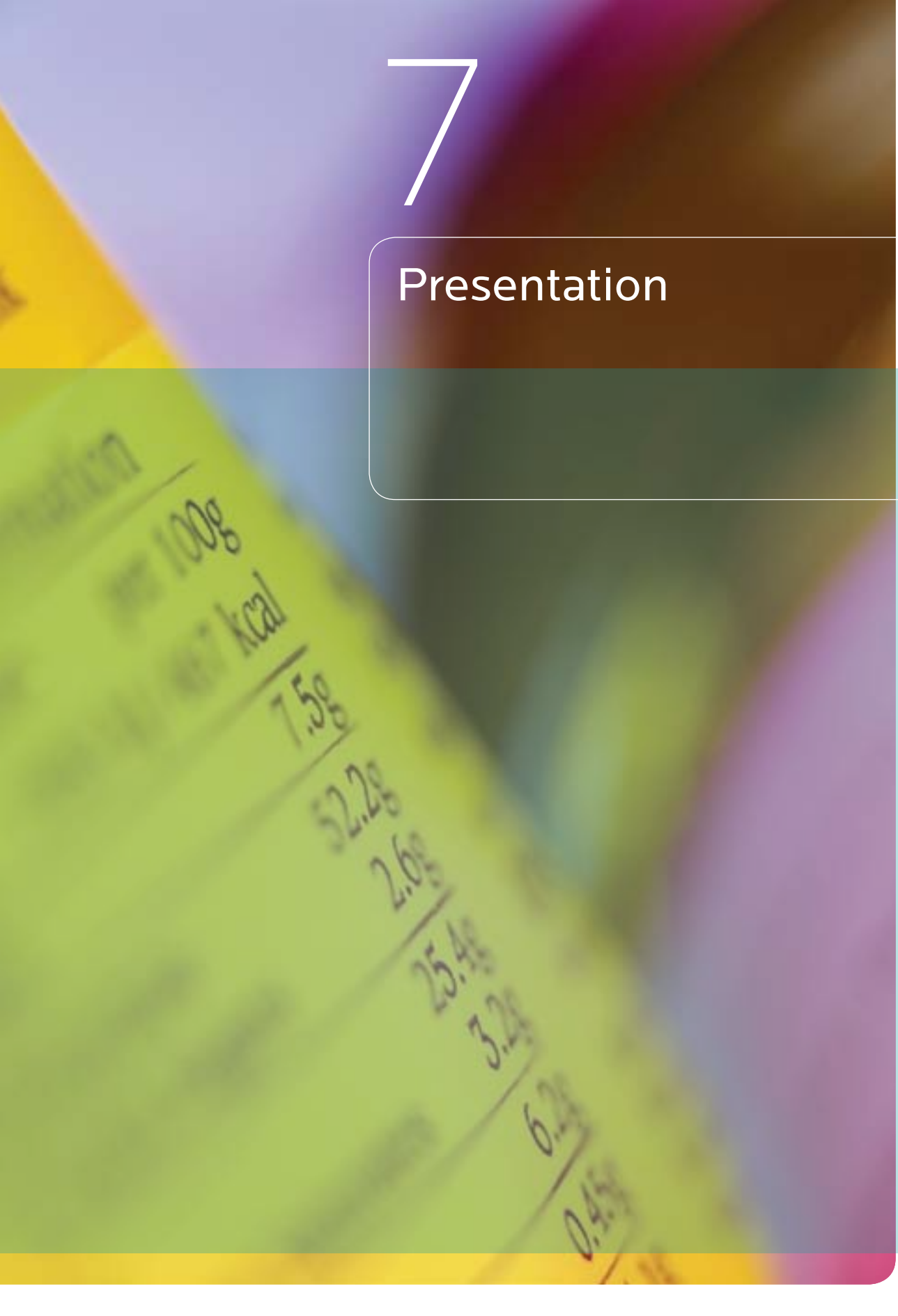
All unpackaged foods or unprocessed foods displayed in a package that does not obscure the nature and quality of the food:

d. 'Grown in Australia'; for foods wholly grown in Australia.

'Made in' as a stand-alone claim should not be used in reference to Australian foods.

6.45 The Panel regards such a CoOL option as being an effective, unambiguous and easily understood option, unique to food labelling, which will serve to improve CoOL for both consumers and manufacturers. The introduction of such a framework will require communication to consumers and industry so that the meanings of all the terms are well understood.

Recommendation 42:
That for foods bearing some form of Australian claim, a consumer-friendly, food-specific country-of-origin labelling framework, based primarily on the ingoing weight of the ingredients and components (excluding water), be developed.



7

Presentation

Presentation

7.1 The presentation of text and images influences consumers' ability to notice, locate, read and comprehend the information contained on a food label: 'Food Labelling should provide clear, simple and easy to interpret information that can be understood across demographic groups, particularly lower socio-economic groups.'[192] Both the physical appearance of text and images and their placement on the label, shelf or other location are of relevance to this Review, as effectiveness of communication comprises an integral component of risk management. This chapter of the Report examines these presentation issues, focusing firstly on the appearance and location of text and then of images. The potential role of information technology in delivering additional product information to consumers at the point of sale is also reviewed.

7.2 Presentation issues are the crux of label communication and as such it is important to apply universal design principles that aim to increase accessibility across the population (see Explanatory Box 16).[193] The use of universal principles, in particular the Perceptible Information Principle, in food label design is warranted by several factors. Firstly, the importance of food to health means that as many consumers as possible need to access adequate knowledge to inform their food-related decisions. While manufacturers are primarily concerned with making their labels attractive and persuasive, of greater importance to this Review is consumers' ability to perceive, understand and use information appearing on the label to make informed decisions, in particular to manage their health. Secondly, the Australian and New Zealand population is ageing, which will result in increasing numbers of people experiencing age-related vision deterioration. Older adults have been found to experience greater difficulty relative to younger adults when attempting to read labels. Thirdly, socio-economic inequities in health result in the less affluent experiencing higher levels of obesity and its attendant health problems.[194] These factors demonstrate the need for food labelling to be readily visible and comprehensible to a wide range of consumers with differing levels of vision, motivation, cognitive ability and knowledge. The adoption of a universal

Explanatory Box 16: The Perceptible Information Principle

The Center for Universal Design has developed seven principles that can be applied in various contexts to facilitate universal access. One of these is the Perceptible Information Principle, which relates specifically to information provision and thus constitutes a useful guide for food labelling policy. It states that creators of communications should: '[U]se different modes (pictorial, verbal, tactile) for redundant presentation of essential information; provide adequate contrast between essential information and its surroundings; and maximise "legibility" of essential information.'

Source: The Center for Universal Design, <http://www.ncsu.edu/www/ncsu/design/sod5/cud/about_ud/udprinciplestext.htm>.

principles approach has the potential to increase the ability of food labelling to favourably influence the dietary behaviours of the maximum number of consumers.

Recommendation 43:
That the Perceptible Information Principle be used as a guide for labelling presentation to maximise label comprehension among a wide range of consumers.

Text

7.3 Concerns were expressed in many submissions and consultation sessions about the difficulties experienced by consumers when attempting to glean meaning from food labels. These reported difficulties primarily related to legibility (the reader's ability to discern a character or symbol, as influenced by font size, font style and contrast) and readability (the ability to comprehend the meaning of text, as influenced by word length and complexity). This feedback is supported by the results of the FSANZ *Consumer Attitudes Survey 2007*, which found that around a quarter of the sampled Australians and New Zealanders reported difficulty reading and/or understanding food labels. These results indicate that the current requirements should be strengthened to ensure consumers are able to read and therefore utilise information provided on food labels.

7.4 In terms of the way in which mandatory information is presented on food labels, the current FSANZ Standard specifies, 'Unless otherwise expressly permitted by this Code, each word, statement, expression or design prescribed to be contained, written or set out in a label must, wherever occurring, be so contained, written or set out legibly and prominently such as to afford a distinct contrast to the background and in the English language'.[195] In addition, warning statements must be at least 3 mm in size (approximately equivalent to 8 point font) or 1.5 mm (4 point font) for small packages. For CoOL of unpackaged food where the information is provided in connection with the display of the food rather than on a label on a product (e.g., for fruit, vegetables and seafood), the minimum requirement is 9 mm (24 point font). An exception is where the information is in a refrigerated assisted service display cabinet when the minimum requirement is reduced to 5 mm (13 point font). The current National Trade Measurement Regulations[196] require a character height for measurement markings of between 2.0 mm and 4.8 mm (6 to 13 point font), depending on package size. Explanatory Box 17 shows text ranging in size from 6 to 12 point font.

Explanatory Box 17:
Range of Font Sizes

This is 6 point (approx 2.1 mm)

This is 8 point (approx 2.8 mm)

This is 10 point (approx 3.5 mm)

This is 12 point (approx 4.2 mm)

7.5 In the UK, the Food Standards Authority (FSA) recommends a minimum text size of 10 point font (3.5 mm), with information relating to ingredients and allergens to be at the larger end of the scale. In the USA and Canada, nutrition information must be presented in text that is a minimum of 1/16th of an inch high (1.5 mm, 4 point font) wherever package size allows, with the height determined by the lower case 'o'. In the USA there is also a requirement for combined upper and lower case to be used and the most important information to be in bold.* In Europe, a proposal is under consideration for a minimum font size of 3mm for mandatory information.[197]

7.6 Independent studies of text readability tend to concur that a text size of 3.5 mm to 4.5 mm (approximately 10 to 12 point font) provides the best readability for the greatest number of people.[198] Other general aspects of label presentation that are recommended to enhance legibility include open font style, mixed case, uniform stroke width, matt (not shiny) surface, adequate spacing between lines, left justified text, clear (non-busy) background and non-touching letters.[199]

Recommendation 44:
That a minimum font size of 3.5 mm in an open font style in mixed case be applied for mandated information, with the exception of small package sizes where the minimum font size should be 1.5 mm.

Recommendation 45:
That a set of guidelines be developed in consultation with industry that includes reference to other presentation factors such as letter and line spacing, text justification and stroke width.

7.7 Some consumer submissions discussed difficulties associated with contrast, noting that particular combinations of foreground and background colour are especially problematic for legibility. Previous food labelling research has also highlighted the importance of contrast for legibility.[200] The current Food Standards Code (the Code) does not state any specific requirements for tonal contrast. The FSA suggests a contrast of at least 70%, which corresponds with the contrast recommendation for bar code presentation by GS1 Australia.[201]

Recommendation 46:
That a minimum contrast level of 70% for mandated information be stipulated in the Food Standards Code.

* There has been pressure to change these requirements. The Centre for Science in the Public Interest (2010) is recommending a change to a minimum of at least 8 point font size (3 mm) in a non-condensed font style.

7.8 Communication strategies should reflect the level of risk. Given their particular importance, warning statements and allergens should appear prominently on the label so they can be quickly located by individuals seeking this information.[202] This can be achieved by emboldening the text to differentiate it from the surrounding information and listing allergens both within and separately from the ingredients list. Two examples are provided in Figure 9.

Figure 9: Examples of Allergen Labelling

Example 1

Allergy Advice

- Contains **gluten**.
- **Recipe:** No nuts.
- **Ingredients: Cannot guarantee nut free.**

Factory: Before being prepared for manufacture of this product, the equipment was previously used to make products containing nuts.

Example 2

Ingredients: **Wholemeal** Flour [Folic Acid], **Wheat** Flour, Vegetable Fats and Oils [Antioxidants (306 [**Soy**], 307), Malt Extract (from **Barley**), Glucose (from **Wheat**), Sugar, **Wheatgerm**, Salt, **Milk** Solids, Raising Agents (500, 503).
Contains: Wheat, Barley, Soy and Milk
May Contain: Tree Nuts, Egg and Sesame

Recommendation 47:
That warning and advisory statements be emboldened and allergens emboldened both in the ingredients list and in a separate list.

7.9 Greater attention should also be given to the location of preventative health information on the label in order to influence its prominence and readability. The individual information elements should build a clear overall picture of the health message, but where different elements of mandated information are placed in different areas of the label, it is difficult for consumers to locate and compare them. Co-location of mandatory nutrition information on the label (i.e., NIP, ingredients list, warning statements, allergen identification and use, and storage instructions) would facilitate an integrated assessment of the various information components to promote better comprehension.* Such a strategy would accommodate consumers' preference for a standardised pack layout[203] and would be consistent with

* While consumers would find it useful to have the use by date also included in this health information section, the Panel recognises that current date-stamping processes may make this too difficult. Future inclusion of use by information in this section could be considered at some time in the future.

the FSA's recommendation that 'all mandatory information should ideally be positioned on any single face of the pack within defined borders'.[204] To further assist consumers, producers may choose to also place approved nutrition, health and related claims in this location.

Recommendation 48:
That industry be encouraged to develop a set of guidelines relating to the co-location of mandatory health information presented in a standardised manner on the label. Government should facilitate this process through the provision of appropriate resources and expertise.

7.10 While this Report does not deal specifically with home-delivered meals originating from government or community organisations, given the advanced age of many recipients of these meals and hence their higher health risk profile, it would be ideal if the recommendations relating to text presentation were also applied in these contexts.

7.11 It has been suggested that it is possible to develop a design assessment tool that determines whether a given piece of text meets certain presentation standards.[205] Such a tool is comprised of a series of questions that allows an assessor to determine compliance. It may be possible for a similar process be undertaken to develop an automated food label assessment tool that could be administered on a cost-recovery basis. Should such a tool be made available, its use by manufacturers or retailers is likely to demonstrate due diligence in any future prosecution relating to labelling.

Recommendation 49:
That the development of an automated label assessment tool be investigated that can gauge a label's compliance with mandated legibility requirements and those stipulated in relevant voluntary codes.

Images

7.12 The provision of mandated nutrition information is an essential component of the preventative health role of the label. This information is currently positioned on the back of the food label and requires some level of literacy and numeracy to interpret. This information is useful to many in the population but does not provide simple interpretative guidance to those in the community who may need it most.

7.13 The Panel received multiple public health organisation and consumer submissions supporting interpretative, evidence-based front-of-pack labelling elements. Interpretative symbols or endorsements on labels have the potential to convey important nutrition information when included as one of multiple methods to facilitate healthy eating choices. Collectively, these interpretative symbols or endorsements have been

termed front-of-pack labelling (FoPL) because they are typically located on the front of the package. Some front-of-pack labels are not nutrition related, such as those designed to communicate information about consumer values issues (e.g., fair trade certification symbols), but many have a specific nutrition focus (e.g., the Heart Foundation Tick and the Glycaemic Index (GI) Symbol). The use of front-of-pack elements has risen sharply in the last few years and has occurred in an ad hoc fashion without public debate or active government deliberation.

7.14 Consistent with the universal design requirement for perceptible information, nutrition information needs to be presented in multiple formats to optimise consumer awareness and behavioural response without creating confusion between the different information sources. However, information asymmetry is not resolved merely by the provision of more information, but instead by the provision of carefully targeted and presented information. Too much information on a label can result in consumers making less effort to locate relevant information and can even cause them to ignore information on the label entirely.[206] FoPL can assist consumers to locate and comprehend nutrition information, making it easier for them to choose healthier options from competing alternatives. To optimise the public health benefit, nutrition-related FoPL should reflect population level goals, such as the NHMRC's *Dietary Guidelines for Australians* and be presented in a standardised format that is supported through community and professional education initiatives.

7.15 Consideration of the use of and format for FoPL is very timely. There has been considerable discussion in both the domestic and international arenas about the benefits and costs of introducing a consistent and mandatory FoPL system to supplement the NIP. The USA is currently undertaking a major review of FoPL with some expectation that a mandatory system will be implemented in due course.[207] The UK's FSA recently released their decision to provide guidance to manufacturers who elect to include FoPL elements on their food packages and the European Union has taken an initial decision regarding FoPL guidance for the European Union countries, although this has yet to be finalised. In Australia, the Australian Chronic Disease Prevention Alliance called for a mandatory interpretative FoPL scheme[208] and the Ministerial Council has developed a policy statement in support of FoPL. The statement recognises the need for greater consumer awareness of the relative healthiness of different foods to facilitate better food choices. The policy statement reflects current knowledge in relation to consumer decision-making processes, especially in terms of the particular needs of vulnerable consumers. The statement is an important component of an overall strategy to create food environments that are conducive to population health.

Front-of-Pack Labelling

7.16 A major challenge in presenting nutrition information on the food label is how to effectively communicate with those in the population who have the greatest need for the information. While some consumers regularly use food labels and are competent in interpreting the nutrition information currently provided, many others either ignore the information or encounter substantial interpretation difficulties.[209] Those consumers who are least likely to use food labels are typically those who experience higher rates of nutrition-related chronic illness, such as those of low socio-economic status, those with low levels of education, those with low levels of nutrition knowledge, members of indigenous/ethnic groups and the elderly. Those who are more likely to actively access and utilise nutrition information currently provided on food labels are those who are purchasing a product for the first time, purchasing for children, health- or weight-conscious, more aware of the diet-disease link or already experiencing chronic illness.[210]

7.17 As a source of information, food labels compete with a wide range of other factors for consumers' consideration during the purchase process. These other factors include price, taste, brand name, habitual shopping behaviours, pressure from family members, perceived self-efficacy relating to healthy eating, cultural and social norms, product familiarity and existing beliefs relating to the product or product category. In addition, time pressures limit the attention paid to food labels at the point of sale. It is estimated that consumers typically spend between four and ten seconds choosing a product in a supermarket.[211] In the FSANZ *Consumer Attitudes Survey 2007*, around a third of Australian and New Zealand consumers reported that they lack adequate time to read food labels while shopping.

7.18 A further factor is the extent of food advertising. It has been estimated that people are exposed to up to 3,000 commercial messages per day.[212] Advertisements create both conscious and subconscious effects that influence individuals' consumption decisions.[213] While the food industry prioritises its right to advertise on labels and elsewhere, if improvements in public health are going to be made it will be necessary to ensure labels clearly communicate the health-related properties of the product. Easily assimilated health information supplied at the point of sale provides a small yet critical countermeasure to ubiquitous commercial messages that typically focus on products' favourable attributes, whether they be tangible or symbolic. Effective FoPL systems have the advantage of allowing products with superior health benefits to rapidly and efficiently convey this information to consumers, thus constituting a marketing advantage to producers and retailers of such products.

7.19 Assumptions of rational decision making by motivated consumers do not hold in most food purchasing contexts.[214] The presentation format of nutrition information needs to reflect the low involvement nature of many

food purchasing decisions. Low involvement indicates the use of peripheral processing (non-intentional information acquisition) and therefore the need for simple ways of communicating information. Ideal communication methods increase accidental information acquisition to overcome the numerous factors that discourage consumers from consciously seeking information on food labels. By facilitating accidental or unintended exposure to nutrition information, FoPL can prompt consumers to reconsider their purchase decisions more regularly than can the back-of-pack information that relies on consumers' motivation to locate and interpret nutrition information.[215] FoPL is therefore most advantageous for reaching consumers who limit their information search to the front of the pack, which is the traditional domain of marketing information rather than nutrition information.

7.20 An effective FoPL system is also capable of encouraging industry to improve the healthiness of products available in the marketplace.[216] More transparent labelling is an important motivation for favourable product reformulation.[217] Of note is that numerous companies operating in Australia have already reformulated their products to accommodate new catering policies in government-controlled schools and health facilities.[218] This illustrates that new marketing 'opportunities' generated by policy change can result in innovative product development by food manufacturers.

7.21 In contrast, existing labelling requirements do not appear to have been adequate to encourage reformulations in line with healthy eating principles. An example is the deterioration in the healthiness of yoghurts available in Australia in the relatively short time period 2005–08.[219] Over this period, energy and fat levels of yoghurt products increased, while protein levels decreased. Current labelling requirements have not prevented this trend, nor made it readily apparent to consumers. An effective FoPL system would make such deterioration obvious to consumers and assist them to choose appropriate options from a product range that is often promoted as being conducive to good health.

Recommendation 50:
That an interpretative front-of-pack labelling system be developed that is reflective of a comprehensive Nutrition Policy and agreed public health priorities.

Which FoPL System?

7.22 While there is now a growing consensus between industry, consumers, health advocacy groups and governments in favour of FoPL, there is no consensus on the best form of labelling. There are currently numerous industry and agency-initiated FoPL systems operating in Australia and New Zealand. These include the multi-icon daily percentage intake system, along with individual logos and icons that relate to specific issues (e.g., fair trade, organic, GI, heart health). Given the need for nutrition labelling to compete

with multiple other influences at the point of sale, a lack of standardisation in FoPL has the potential to cause further confusion among consumers. The recent debate surrounding the Coles Supermarkets' Smart Buy logo that features a red tick on a white background and is therefore easily confused with the Heart Foundation Tick system is a case in point.[220] There is thus a need for a single, consistent FoPL system to provide accurate nutrition information to consumers and avoid conflicting messages about the health attributes of foods.

7.23 The selection of a single FoPL system as the best system for Australia and New Zealand requires consideration of the competing FoPL systems that have been introduced or contemplated for the Australian and New Zealand marketplace. In recent times, the food industry has been proactive in introducing the percentage of daily intake (%DI) system. The AFGC reports that the number of products displaying the %DI on front-of-pack labels increased from 1,167 to 1,939 (a 66% increase) in the six months from February 2009.[221] This still represents a very small proportion of the total product lines carried in supermarkets, and the system is not endorsed by all manufacturers. For example, Sanitarium report that they do not support the %DI because 'the % daily intake value only provides information about the quantity of nutrients not the quality of nutrition'.[222]

7.24 Numerous studies have found that the %DI system is confusing for consumers.[223] A major issue is that it is based on inconsistent serving sizes, with different products and brands using different average serving sizes for the daily intake information provided on the front of the pack. In addition, the information is typically based on an 'average' adult's daily nutrition requirements. The Royal Australasian College of Physicians notes that where the system is used on products purchased for children, the use of intake recommendations based on adult requirements is misleading.[224] Another issue relating to the %DI system is its reliance on percentages, which are generally more confusing than other forms of information representation and are especially problematic for consumers with low levels of literacy who cope better with pictures than numbers.[225] The Australian Adult Literacy and Life Skills Survey[226] found that 53% of adults had numeracy levels below those considered necessary to cope with the daily demands of a knowledge-based society.

7.25 A further limitation is that the %DI system requires significant cognitive processing for consumers to determine how healthy the product is in isolation and relative to other products within the same category. It is challenging for consumers to use the information in the context of their whole diets, as they would need to recall the percentage of each nutrient that has already been accounted for in previously selected products. There is also an implicit assumption that there is some intake goal that the consumer is working towards, when in some instances the objective should be minimal intake of the nutrient (e.g., salt and saturated fat).[227]

7.26 Other licence-based front-of-pack labels have also been developed, such as the GI symbol and the Heart Foundation Tick. These systems typically apply to a limited range of products and often involve substantial fees, which can prevent small producers from participating in the programs.

7.27 The primary purpose of FoPL should be to guide consumers to choose healthier foods, particularly those that are lower in total energy, saturated fat, sugar and salt. This needs to be achieved while also delivering the simplicity that consumers value in FoPL systems.[228] While industry groups are not enamoured with a FoPL system that passes judgement on foods, it is precisely this interpretative function that is valued by consumer groups and health professionals. A primary benefit of an effective FoPL system is its ability to make the absolute and relative health status of the food readily apparent to a broad range of consumers.[229] This is especially important for those with low literacy and cognitive skills who tend to be of lower socio-economic status and therefore at greater risk of obesity and other nutrition-related conditions.

7.28 Among the competing FoPL systems that have been tested in Australia, New Zealand and elsewhere, the colour-coded multiple traffic lights (MTL) system has been consistently found to be most effective in facilitating consumers' understanding of the nutrient profiles of foods within and across food categories.[230] The MTL system comprises coloured 'lights' for key nutrients — a green light signifies a healthy choice, an amber/orange light an 'okay' choice and a red light a less healthy or unhealthy choice. There are various forms of the MTL system, some with words (e.g., low/medium/high) or numbers (e.g., nutrient amounts per serving) associated with each light.

7.29 Many of the submissions from consumers, consumer groups and health groups expressed strong support for the MTL system.[231] Of particular note is the Public Health Association of Australia's submission representing more than 40 public health promotion organisations. This submission noted that the implementation of a MTL system 'would enable all Australians and New Zealanders to make instant decisions on the healthiness of food and drink products, limit the need for extensive use of nutrition knowledge at the point of purchase and be available for use by all Australians regardless of literacy and numeracy skills'.[232]

7.30 The MTL system has been found to be most beneficial for those who are less skilled at utilising the NIP,[233] thus providing nutrition information to those who are least able to access it in other ways. The MTL system is also a useful aid to health professionals when providing clients with dietary advice.[234]

7.31 Compared to voluntary FoPL systems such as the %DI and the Heart Foundation Tick that are only applied to a limited number of products, a mandatory MTL system would include all products in a category and also facilitate between-category comparisons. It would have the advantage of giving a clear message to the consumer who arrives at the checkout with a

trolley full of red dots. It would also give a clear message to food producers whose product ranges are primarily classified at the red end of the traffic light spectrum.

7.32 The MTL system has achieved some familiarity in the marketplace due to its wide use in school canteens in Australia and New Zealand. The forthcoming Australian Department of Education's National School Canteen Policy is based specifically on traffic lights and some States (e.g., Western Australia and Queensland) have also introduced guidelines for health facilities that are based on traffic lights. Similar policies are currently being developed for sporting venues. The evaluation of the Western Australia school canteen policy, which has been in effect since 2007, found that around one in four parents reported translating their traffic light knowledge to their supermarket purchases.[235] This illustrates the synergies that could be generated if a mandatory, standardised system is implemented across food purchase domains.

7.33 In the case of single symbols/endorsements relating to issues such as heart health, organic status, Australian made and glycaemic load, those that relate to decision criteria that are not covered by the MTL system could co-exist without contributing significantly to consumer confusion. Those that relate specifically to the nutritional composition of the food are likely to be made redundant by the implementation of MTL. However, there is potential for these programs to evolve to retain their relevance by delivering information of value to consumers that is not already communicated via the MTL system. Overall, the use of nutrition-related icons needs to be more transparent, subject to discipline to prevent the proliferation of logos and subject to a governmental framework to ensure consistency in appropriate iconology.

7.34 The effective introduction of a MTL system will require acceptance by numerous stakeholders and is therefore likely to be more successful with a staged implementation process. Initially introducing the system as voluntary would allow producers with products with favourable nutritional profiles to utilise the traffic lights to demonstrate to consumers the nutritional value of their products. This should commence the process of encouraging reformulation to allow more companies to capitalise on the system. Where any general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, the MTL system should be mandatory to ensure consumers are receiving balanced information about the product.

Recommendation 51:
That a multiple traffic lights front-of-pack labelling system be introduced. Such a system to be voluntary in the first instance, except where general or high level health claims are made or equivalent endorsements/trade names/marks appear on the label, in which case it should be mandatory.

7.35 In order to facilitate adoption of the MTL system, government advice and support should be provided. This could take the form of information services relating to nutrient thresholds and other technical information and grants for small businesses to assist in managing implementation costs. Public awareness programs will be required to enhance consumers' comprehension and use of the system and should integrate with school canteen and other institutional food service programs.

Recommendation 52:
That government advice and support be provided to producers adopting the multiple traffic lights system and that its introduction be accompanied by comprehensive consumer education to explain and support the system.

7.36 Ongoing evaluation of the effectiveness of the MTL system should be given a high priority to identify factors influencing consumers' and producers' usage of the system and to investigate how adoption rates could be increased over time. While numerous studies have demonstrated the ability of the MTL system to more effectively convey nutrition information to consumers relative to other forms of FoPL, measuring the effects of the system on behaviour in real world contexts is made difficult in an environment with competing FoPL systems. In the proposed Australian and New Zealand regime, this difficulty would be partly offset by the mandatory requirement to provide MTL where nutrition, health or related claims and nutrition-related symbols/endorsements are used. In addition, consumer education campaigns and government support for companies wanting to implement the MTL system will promote adoption and discourage the use of other FoPL systems during the voluntary phase.

Recommendation 53:
That ongoing monitoring and evaluation of the multiple traffic lights system be undertaken to assess industry compliance and the effectiveness of the system in improving the food supply and influencing consumers' food choices.

7.37 Consumers have been found to appreciate quick-service restaurant menu boards that have an interpretative element that prevents them from having to perform calculations while selecting a meal.[236] This suggests that a system reflecting the principles of FoPL could be effectively implemented in chain food service outlets. Australian health organisations strongly support such a strategy.[237] To be effective, nutrition information in chain food service outlets needs to be readily visible at the point of sale and to stand out from the surrounding environment. In many cases this will require

exposure on menu boards. The MTL system recommended above for packaged and unpackaged foods lends itself to this application.[238]

Recommendation 54:
That chain food service outlets across Australia and New Zealand be encouraged to display the multiple traffic lights system on menus/menu boards. Such a system be mandatory where general or high level health claims are made or equivalent endorsements/trade names/marks are used.

7.38 Alcohol constitutes an exception because the FoPL objective of assisting consumers make healthier choices is unlikely to be achieved in this case. For many alcoholic beverages, the indication on a front-of-pack label of favourable (i.e., nil) quantities of fat, saturated fat, sodium and sugar could imply a health benefit to consumers. Highlighting nutrients not present in straight alcoholic beverages (beer/wine/spirits) may be misleading to consumers. The creative and responsive industry initiative using imagery to display the number of standard drinks in a container is a commendable example of another FoPL system that may be more appropriate for this product category.*

Recommendation 55:
That any beverages containing alcohol be exempt from nutrition-related front-of-pack labelling requirements.

Information Technology

7.39 Technological advances may ultimately offer some solutions to the ever increasing demands placed on the food label. The once sacrosanct and ubiquitous price tag has typically been replaced with a barcode and/or a price indicator on the shelf. Advances in technology have produced the opportunity for extended labelling that is accessed through an electronic interface rather than existing physically on the product. It is now possible for hand-held devices (e.g., mobile telephones) or scanners located on trolleys or in central locations in stores to be used to transmit product information. GS1 Australia, the not-for-profit industry organisation that administers the international barcode system, is working towards becoming a central repository for detailed product information that can be accessed via the barcode. This will facilitate consumer access to a much wider range of information, particularly in relation to values issues and information related to new technologies. Given space restrictions, little information of this kind is currently provided on the label.

* See, for example, the Winemakers' Federation of Australia's standard drinks system at <www.wfa.org.au/standard_drinks_labelling.aspx>.

7.40 Despite its potential, extended labelling technology is still in its infancy. As a result, decisions relating to information that should be placed on physical food labels cannot rely on assumptions relating to the future availability of online information and consumer access to devices. Another consideration is the likely take-up rate of the devices among consumers, many of whom already struggle with time constraints while shopping and may not be receptive to information-access methods that are relatively time-consuming. Industry recognises that for the moment the focus still needs to be firmly on what is physically located on the product label at the point of sale.[239] As noted in the New Zealand Retailers Association submission, 'As far as the provision of adequate information to consumers is concerned we accept that some information needs to continue to be physically included on labels'.[240] Thus for the foreseeable future, this technology can only play a supplementary role.

Recommendation 56:

That the potential of new information technologies be considered by consumer organisations, industry and government to provide extended product labelling for non-mandatory information.

8

Compliance and Enforcement

Compliance and Enforcement

8.1 Food labelling requirements are enforced (see also Explanatory Box 18) principally through two mechanisms. The first is through the specific labelling requirements of the Code becoming part of general food laws. This happens automatically in the Australian States and Territories and by regulation in New Zealand. The second occurs through the general provisions of the Australian and New Zealand consumer laws relating to misleading or deceptive conduct. These two systems operate independently: a claim can be in breach of consumer protection laws but not in breach of the Code; another can be in breach of the Code but not in breach of consumer protection laws. FSANZ develops the standards, but has no role in their enforcement under either system.[241]

Explanatory Box 18: Compliance and Enforcement Terms

For the purposes of the Review, the Panel has used the following definitions:

Compliance: The act of conforming to legislative and regulatory requirements.

Enforcement: The act of imposing legislative and regulatory requirements on another party.

Prosecution: The act of instituting legal proceedings against another party.

Current Approaches

8.2 The Code provides for mandatory food labelling requirements and non-compliance risks prosecution under the food acts of the jurisdictions. The offences and penalties that can apply in these cases follow the enforcement provisions of the *Model Food Provisions — Annex A* as required by the Federal/State/Territory Food Regulation Agreement.[242] New Zealand has its own distinctive Food Act.* Prosecutions are generally undertaken by the relevant food authority.

8.3 Consumer protection law relating to food labels offers a general oversight of all claims (whether or not they are covered by the Code) and provides avenues to pursue statements that are misleading or deceptive. In Australia this is primarily through the Australian Consumer Law provisions of the Commonwealth *Competition and Consumer Act 2010*.† New Zealand protects consumers through the *Fair Trading Act 1986*. For these Acts to apply, an aspect of the food label typically must be 'misleading or deceptive' in terms of its effect on consumers.

8.4 Consumer protection laws are most relevant to food labelling in the context of values claims, and to date the Code has focused on labelling for public health and food safety purposes. However, there is no reason why some values statements, particularly those relating to specific methods

* A proposed new Food Act is currently being considered by the New Zealand Parliament.

† Previously the *Trade Practices Act 1974*.

or processes of food production, could not be included in the Code. These could be either voluntary or mandatory provisions since the objectives of FSANZ in developing standards include the provision of information sufficient to make informed choices and the prevention of misleading or deceptive conduct. Notwithstanding, for the reasons set out in the Report, the Panel believes that for the most part generalised values claims should be supervised by the consumer protection laws.

8.5 To be effective, food labelling statements and claims, whether in the Code or left to the misleading or deceptive provisions of consumer protection laws, must be actively enforced. If not, their value is lost and food labelling risks becoming misleading, inconsistent and even hazardous. Labels have crucial roles in protecting both food safety and assisting in health promotion and are thus one of the most important elements in food law. As such, the monitoring of compliance and the enforcement of food labelling requirements must be given a high priority by agencies responsible for them. As one industry submission suggested, 'Low levels of compliance to any regulatory measure challenge its integrity and undermine the credibility of the supporting agency'.[243] Consumer complaints that relate to misleading or deceptive statements, rather than specific provisions of the Code, must also be taken seriously and their proper resolution is a necessary component of an effective and reliable food regulation system.

8.6 Many submissions from both industry and consumer organisations were critical of levels of enforcement for food labels. One industry submission called them a 'glaring weakness of the Australian food system',[244] another described enforcement as 'highly subjective, inefficient and ineffective',[245] while a third submission from an NGO claimed that you 'can walk into any supermarket and find dozens of breaches of the label regulations'.[246] It was also said by another NGO that enforcement was primarily in response to complaints and that 'an active enforcement model [is needed] where relevant state government agencies closely monitor food labelling ... on a regular basis'.[247] Some submissions also reported that complaints were not followed up and that it was often unclear which agency would take responsibility, particularly if the manufacturer was in another state.* Reportedly, this leads to a 'piecemeal' approach to enforcement, resulting in the unequal protection of consumers across jurisdictions, according to a consumer organisation.[248] Some submissions, including from the Obesity Policy Coalition, felt that food labelling received 'a low enforcement priority due to limited resources and a focus on food safety [hygiene] issues'.[249] There are also said to be

* In these cases the jurisdictions apply a 'home jurisdiction rule' which is an administrative process for liaison and coordination between food regulators where goods produced and used by food businesses are traded across borders and where the head office of a business is located in a different state or territory (see Australia and New Zealand Enforcement Guideline at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policydocs.htm#anzeguideline>).

inconsistencies in the interpretation of the requirements across the 10 jurisdictions* responsible for interpreting the Code: it was claimed that despite the wording of the standards being uniform, there were substantial differences among jurisdictions as to what the words mean in practice. Overall, criticisms of the enforcement of the Code were commonly made: food businesses complained that the standards are interpreted inconsistently and consumers and consumer groups complained that enforcement was not adequate and that often complaints were not followed up.

8.7 However, not all submissions agreed with these complaints about enforcement, some suggesting that they have not been properly demonstrated or explored. The South Australian Government made the point that there is not 'sufficient analysis to clearly and accurately define this problem'.[250] The Tasmanian Government said that there appears to be 'little evidence of significant issues in the marketplace due to inconsistencies in interpretation and administration'.[251] Nevertheless, concerns about enforcement were made so often in submissions, together with many recommendations for structural change, that the Panel accepts there is a clear public perception of a problem that needs to be addressed.

8.8 Enforcement outcomes (or lack of them) are a complex issue in any field of regulatory activity. Decisions whether or not to prosecute are always subjective and, as the New South Wales Government indicated, there should be 'an acceptable level of latitude regarding compliance where margins of error are unavoidable'.[252] Furthermore, the final decision whether or not to prosecute often lies with the local crown law departments rather than the food agencies. The penalties imposed by courts are also subjective and may vary across jurisdictions. However, a consistent approach to enforcement has been sought through the *Australian & New Zealand Food Regulation Enforcement Guideline* which establishes a number of principles (common to enforcement policies generally) to determine whether or not to prosecute, including that the decision to take action must involve 'a graduated and proportionate approach' and be 'in the public interest'.[253] The Guideline also requires the enforcement process to be 'accountable and transparent' and consistently enforced to ensure that food businesses are treated equally in all jurisdictions.†

8.9 If prosecutions are taken to be the sole measure of enforcement, it is the case that, with the possible exception of New South Wales which reported some 90 prosecutions over five years‡ and Queensland (eight prosecutions

* The eight Australian States and Territories, the Australian Government through AQIS in the case of imported food and New Zealand.

† The Guideline referred to in paragraph 8.8 applies to regulatory enforcement activity (including public health, food authority and primary industry portfolios) within all jurisdictions and was endorsed by ISC, in November 2009.

‡ The most high profile being the 2010 prosecution of a company for labelling overseas pork as Australian, leading to a fine of $233,325 with $200,000 costs (see NSW Minister for Primary Industries, Press Release, 9 June 2010).

over two years), enforcement of the food labelling laws is quite rare, with few, if any, cases reaching the courts. But this overlooks the fact that many jurisdictions use informal approaches to achieve compliance and also that prosecution is not appropriate in every case where a breach has occurred. As one jurisdiction noted 'the vast majority of food labelling matters can be resolved promptly without reference to legal action or fines. This is because other "pressure" [or informal mechanisms] can be applied to the business to achieve compliance, such as the threat of prosecution, the threat of a compulsory recall, adverse publicity and so on'.[254]

8.10 Another way of testing compliance is via the use of surveys. A FSANZ 'desktop' study in 2006 explored the levels of compliance by assessing 1,311 labels for foods available for retail sale in Australia and New Zealand.[255] Measuring each label against 12 requirements,* the study found that for eight of the 12 requirements 'consistency with the Code was 95% or greater'. Compliance with the ingredient declarations, product-specific labelling and NIP was less, around 80%.[256] Non-compliance tended to be highest in the case of minor breaches and in relation to the NIP a high level of minor formatting errors was reported (76% in 2005 and 70% in 2006).[257] Another study done in 2006[258] also reported substantial errors in the NIP†. This suggests a general but far from complete level of compliance with overall labelling requirements and disappointing levels of compliance in relation to accurate descriptions of nutrient content.

8.11 These data suggest that more active monitoring and enforcement across jurisdictions is necessary. The requirements for accurate labelling are an integral part of the food regulatory system and consumers rely on this information to protect their health and also to make informed choices. Persistent inaccuracies in the important area of nutritional information should be a cause for concern, particularly as it has been reported that 84% of Australians and 81% of New Zealanders regard food labels as their 'main source of information about the nutritional content of food'.[259]

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* These 12 requirements were: 1. Legibility of print; 2. Product identification; 3. Mandatory warning /advisory statements; 4. Allergen labelling; 5. Ingredient declaration; 6. Date marking; 7. Directions for use and storage; 8. Nutrition information requirements; 9. Percent characterising ingredients; 10. Altered label (new label placed over incorrect one); 11. Product-specific labelling; 12. Country of Origin (Australia only).

† The study (p. 454) reported that 'only 16% of the products [tested] would fully comply should a leeway of ±20% be introduced for any nutritional compound on the label. By excluding compounds with variations in minor amounts ... the proportion of compliant products increased to 27%. With separate upper and lower limits, 51% of products would fully comply, increasing to 70% when variations in minor amounts were removed from the analysis'.

Recommendation 57:
That monitoring and enforcement of food labelling requirements of the Food Standards Code (accuracy as well as the presence of labelling information) be considered equally important as other aspects of the Food Standards Code and the responsible agencies be given the appropriate level of resources to meet their obligations.

8.12 Under current legislation, formal enforcement actions for breaches of food labelling are almost always limited to prosecutions, which are often time-consuming and expensive to mount. The former Victorian Government noted that there is a need for 'a broader range of enforcement tools to enforce [the Code] effectively'.[260] The Panel believes that more immediate and productive ways of securing compliance with the Code should be considered. These could include the power to issue orders requiring improperly labelled food to be removed from shelves or to be correctly labelled.* Another option would be to allow the enforcement agency to enter into an enforceable undertaking with persons responsible for breaches of the Code, requiring the latter to take specified corrective action such as re-labelling, withdrawing products from sale, placing advertisements in the media or otherwise informing consumers. If introduced, both of these options would increase the capacity for prompt compliance with the Code, prosecution only being required where the breach is regarded as sufficiently serious to warrant it, for repeat offenders or where the person has not complied with the order or undertaking.

Recommendation 58:
That the Model Food Provisions and the food acts of the jurisdictions be amended to allow a more versatile range of enforcement provisions, such as the power to make orders or require user-paid compliance testing consequent on a breach or impose enforceable undertakings in relation to non-compliant labelling.

8.13 The problem of inconsistent interpretation and patchy enforcement is, to the extent that it occurs, exacerbated by the fact that so many agencies are involved. Across Australia there are as many as 29 authorities and agencies in some way responsible for the regulation of food and its labelling. Each of the States and Territories has a principal agency and in many cases a number of primary production authorities are also involved

* Order making powers currently do not deal with breaches of food labelling as such. They exist for emergency situations where there is 'a serious danger to public health'. Improvement notices and other prohibition orders are restricted to food hygiene issues. The only clear power in relation to mislabelled and non-compliant food is to seize it as evidence of an offence (cl. 26 *Model Food provisions – Annex A*; part 5 and cl. 11 *Model Food provisions – Annex B*). The New Zealand Food Bill 2010 envisages that more broadly based compliance orders could be issued by a court in relation to 'anything that, in the court's opinion, breaches or is likely to breach a requirement of the [proposed] Act'.

(e.g., Safe Food Production Queensland or Dairy Food Safety Victoria). The Australian Government is involved through AQIS and the Australian Customs and Border Protection Service in the case of imported food. In New Zealand, there is the NZFSA as the principal agency with the New Zealand Customs Service and MAF Biosecurity New Zealand also having responsibility for imported foods at the border. To the extent that they are involved with food labelling, local councils can also add substantially to the number of enforcement agencies overall. The multi-jurisdictional nature of enforcement, particularly in Australia, means that some inconsistencies will always occur and there is a case, already recognised, for a strong and effective linking arrangement that brings the various players together.

8.14 The need for greater consistency and interpretation across jurisdictions, given the complexities of the Australian Federal system, was supported by many submissions. Some advocated sweeping changes, with all responsibilities applying at a national level in Australia. Others recommended maintaining current arrangements but with improved coordination. Submissions that supported new structures envisaged an independent national regulatory authority,[261] although others recognised that a national body would have difficulties undertaking surveillance across Australia and, by implication, undertaking enforcement.[262] Some submissions saw an expanded role for FSANZ to take on the enforcement of labelling requirements, while others supported a central labelling advisory agency, either operating independently or as part of FSANZ, and responsible for interpreting the requirements.[263] Consumers also felt that a national body could perform an important educative and 'watchdog' role.[264]

8.15 A number of the Australian jurisdictions were not opposed to the idea of a centralised agency. For example, in its submission the New South Wales Government said that it was 'open to further consideration of a national food labelling [enforcement] agency' and recommended that a 'nation[al] agency responsible for interpretation and administration of food labelling standards' be considered.[265] The former Victorian Government's submission stated that 'in the Australian context, there may be merit in having a single national enforcement agency responsible for monitoring and enforcing compliance with food labelling laws, particularly laws about marketing and claims about food'.[266] However, other jurisdictions disagreed: the Tasmanian Government concluded that 'the rate of inconsistency remains relatively low and arguably does not justify the establishment of a potentially costly centralised approach'.[267] The Western Australian Department of Health indicated that a centralised agency providing interpretative advice 'would aid consistency in administration of the food labelling standards,' but felt that national responsibilities for compliance would be difficult, particularly in the small to medium sector of the industry.[268] The jurisdictions with the preponderance of large food manufacturers looked more favourably on a national agency than the others.

8.16 Overall there was substantial support from both industry and consumers for a national food labelling body. Industry felt it could create a 'level playing field,' providing consistency and certainty. For consumers it offered a way in which complaints could be taken seriously and followed up across jurisdictions. However, some noted the problems of compliance, in particular the difficulties of local enforcement and prosecution by a national agency. Taking all these views into account, the Panel carefully considered the need for a national entity, its possible powers and responsibilities, how it would relate to existing bodies in food administration and, in particular, whether it should have powers to investigate and prosecute breaches of the labelling requirements.

8.17 It is also important that the consumer protection laws are effectively enforced and that misleading or deceptive claims are followed up and resolved. However, the Panel was told that food labelling complaints were not always pursued by the relevant consumer protection agencies; the Tasmanian Government commenting that 'consumer agencies have limited capacity to resolve food labelling issues'.[269] If so, this may be the result of a lack of resources or expertise. On the other hand, the Panel is also aware that there has been a number of high profile examples where enforcement action has been undertaken, resolving a particular complaint while also providing a message to the food industry more generally.* The Panel understands that, in Australia, national enforcement options have been expanded as a result of recent changes to consumer laws. Given the high level of concern expressed to the Panel about misleading or deceptive conduct in relation to food labelling and its wide impact on the community, enforcement in this area warrants a high priority.

Recommendation 59:
That consumer protection concerns related to food labelling be accorded a high priority by the relevant consumer protection agencies (Australian Competition and Consumer Commission, New Zealand Commerce Commission, and State and Territory consumer protection agencies) and complaints be processed and resolved in a timely and transparent manner.

* See, for example, *ACCC v Cadbury Schweppes* [2004] FCA 516; *ACCC v Nudie Foods Australia Pty Ltd* [2008] FCA 943; and *ACCC v Harvey Fresh* [2009] FCA 853.

A New Approach

8.18 The Panel accepts that it is desirable to leave responsibilities for the statutory requirements for compliance and prosecution with the jurisdictions. There are three reasons for this. Firstly, while the Australian Government through the corporations and trade and commerce powers can make laws for most of the food industry, it could not (without a referral of additional powers from the States) regulate much of the local trade where labelling is also an issue, creating an undesirable and confusing two-tiered enforcement system. Secondly, the food industry is very decentralised and food safety issues, including labelling compliance, must be enforced quickly at a local level (e.g., at farm gates, convenience stores, supermarkets, delicatessens). This presents difficulties for a national body, although the former Victorian Government did make the point that 'many food labelling and marketing issues could be dealt with on the papers' and do not require inspectors to be out and about.[270] Thirdly, labelling requirements are intertwined with other aspects of food regulation, such as compositional analysis, and enforcement responsibilities for labelling compliance cannot sensibly be separated from other requirements of the Code.

8.19 However, there is a need to strengthen the overall approach through agreed policy, standards and enforcement procedures. Indeed, the promotion of a consistent approach to the compliance with and enforcement of food standards is one of the major responsibilities of the Ministerial Council.[271] The Panel notes that there is ongoing progress in this area.

8.20 In operation since 2003, the Implementation Sub-Committee (ISC) of FRSC currently has the task of developing and overseeing a consistent approach to the implementation and enforcement of food standards generally.* ISC has developed a *Strategy for consistent implementation of food regulation in Australia,* which is also supported by New Zealand and was endorsed by FRSC and the Ministerial Council in 2005. The Strategy provides a framework for regulatory collaboration across Australia and New Zealand and is intended to lead to a consistent approach to implementation (including compliance and enforcement) of food regulations and standards. ISC has a work plan that includes surveillance and monitoring of labelling standards, assessing the impact of existing standards, implementation planning for new standards (discussed below), better coordination of food regulation between agencies and local government, compliance planning for existing standards, and performance measurement and reporting. ISC also has a Health Claims Working Group and a National Enforcement Policy Working Group.[272]

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* ISC consists of representatives from the Department of Health and Ageing, the Department Agriculture, Fisheries and Forestry, AQIS, FSANZ, one representative from New Zealand, up to two representatives from each State and Territory and one representative from the Australian Local Government Association. Currently, ISC convenes two face-to-face meetings and one teleconference each year.

8.21 ISC has an extensive list of responsibilities of which food labelling is but one. Yet it is not well resourced, with only one full-time project officer funded jointly by the States and Territories, who also contribute to an ISC Project Funding Pool providing additional resources for priority projects. A 2007 review conducted by the Ministerial Council concluded that 'the scope and volume of ISC's work suggests that significantly more resources, greater strategic direction and more commitment from jurisdictions to work towards greater consistency are required to meet ISC's objectives'.[273] However, resources have not increased.

8.22 Other strategies for improving compliance and enforcement are being put in place. Firstly, as part of its 2010–11 work plan, ISC is involved with the development of new food standards with a focus on how they will be enforced and interpreted if taken to court. This work should influence the final wording, making the standards easier to enforce while also promoting consistency in administration. Secondly, there is a more general issue with the development of standards: they are 'legal' documents* that contain mandatory obligations, and in the case of prosecution a court may be obliged to determine their meaning and scope. A number of submissions were critical of the wording. One consumer claimed that the standards were poorly drafted,[274] another that 'the whole of the Food Standards Code should be reviewed'.[275] The South Australian Government suggested that labelling standards 'should include definitions of common terms' as necessary and be supported by 'guidelines or codes of practice'.[276] Unclear drafting poses a substantial barrier for compliance.

8.23 The Code needs to be written as carefully as any other enforceable instrument and always in the light of how it is going to be interpreted in court. The Panel notes that following on from critical comments made in a 2008 NSW Supreme Court case,† a recent audit of the Code prepared by the Australian Government's Office of Legislative Drafting and Publishing identified a range of deficiencies, which, when addressed, should improve its clarity and make enforcement outcomes more certain.

Recommendation 60:
That food standards always be drafted with the understanding that they are intended to be enforceable legal documents. Where current deficiencies in the labelling requirements have been identified, standards should be re-drafted to make the obligations clear.

* They automatically become part of the State and Territory Food Acts and by regulation in New Zealand.

† *Tumney (NSW Food Authority) v Nutricia Australia Pty Ltd*; [2008] NSWSC 1382. The case highlighted a number of problems with the Code, including lack of definitions, paras 21, 37, 66; its 'piecemeal nature' leading to duplication, para 89; and more generally the problems caused by a document not prepared by specialist drafters, para 73. See also para 101.

8.24 A second strategy for improving compliance and enforcement stems from the difficulties people have reported in obtaining assistance in understanding the meaning of individual standards. While standards are drafted and finalised by FSANZ, they are administered and therefore interpreted by the regional food agencies. Hitherto, FSANZ has (perhaps understandably) not wanted to provide advice on the meaning of its standards. However, in late 2009 Council of Australian Governments (COAG) agreed that in the interests of achieving nationally consistent food regulation in Australia, a national centralised advice system should by established by mid 2011. The system will be designed to provide nationally consistent and useful information on food standards 'on a primarily cost-recovery basis, which would be adopted and applied by all State and Territory food regulatory agencies in the course of their monitoring and enforcement activities relating to food standards'.* Regulators and those they regulate, as well as consumers, should benefit from this initiative, which should provide greater certainty for industry and others in relation to what amounts to compliance with a particular food labelling standard.

A Food Labelling Bureau

8.25 The strategies described above will help address the problems of inconsistent interpretation and enforcement of labelling standards, but given the important role that labelling plays in the food regulatory system there is still a need for a specific 'labelling entity' to focus on existing and emerging issues. ISC has a vital coordination role which extends to all of the Code, so its ability to give concerted attention to labelling will be limited. Furthermore, the policy issues of food labelling identified in this Review are wider than just compliance and enforcement of labelling standards. This raises the option of a specific food labelling entity as advocated by many of the submissions.

8.26 If food labelling is to be taken seriously by governments, a new entity, which for the purposes of this Review is called the Food Labelling Bureau (the Bureau), should be established to advise Australian and New Zealand ministers on all aspects of labelling policy. Resources for this Bureau must reflect the high profile of food labelling as the most public face of food policies, standards and laws.

8.27 The Bureau's role should be administrative, advisory and a monitor of compliance and enforcement. It should be user-friendly for consumers

* Council of Australian Governments, Meeting 7 December 2009, Business Regulation and Competition Working Group Report Card. The design of the system was to include consideration of: '[FSANZ] providing such interpretive advice in relation to food standards using existing jurisdictional and/or other consultative mechanisms'; the adoption of the interpretative advice by the states and territories in their monitoring and enforcement activities 'provided arrangements enable states and territories to seek review of such advice'; and other ways 'in which existing ANZFRMC [Australia and New Zealand Food Regulation Ministerial Council] structures and processes can assist in reducing inconsistency and uncertainty about monitoring and enforcement activities relating to food standards'.

and industry and should marshal and support the resources and expertise already on the ground. It should *not* have a formal role in development of standards, which should continue through the current FSANZ arrangements. Nor should it be involved in formal enforcement (the issuing of notices, warnings, etc.) and prosecution, which should continue to operate at a jurisdictional level. However, the Bureau's coordinating and advisory role (as outlined below) should ensure that workable labelling standards, policies and laws are developed and consistently enforced.

8.28 The Bureau should be established formally under the FSANZ Act and report directly to the Ministerial Council. Specifically, it should provide for the appointment of a food labelling coordinator who will perform the functions of the Bureau. The coordinator should be appointed by the Australian Government Minister responsible for the FSANZ Act together with additional staff as may be necessary. The coordinator should also be assisted by a small advisory committee drawn from the key interests in food labelling: regulatory, industry, consumer and public health. The Bureau's powers and responsibilities should be drafted to cover the array of matters outlined below.

8.29 The argument for this approach is based on the high profile that food labelling occupies, the substantial level of public concern that food labelling issues generate and the important and controversial questions that new developments raise, including consumer values issues not necessarily covered by the Code. All of these suggest that the Bureau should have a separate statutory existence and be directly responsible to the Ministerial Council. Furthermore, a body with broad and well-defined responsibilities in the area of food labelling is preferable to grafting additional labelling functions on to ISC, primarily because these new functions would then compete with ISC's wider and more general responsibilities. However, the Bureau and ISC will have many overlapping interests, which suggests that there should be substantial collaboration between the two.

8.30 The Bureau should have the overall responsibility of advising the Australian and New Zealand ministers on all aspects of labelling policy, including the enforcement of existing labelling standards and the development of new standards. More specifically, it should: promote the consistent interpretation and enforcement of food labelling standards; coordinate implementation activities designed to improve compliance with food labelling; play a proactive role in ensuring compliance, including the monitoring of food labelling; facilitate research, education and training; and be accessible to business and the community for queries, advice and complaint handling relating to food labelling.

8.31 The Bureau should also have a role in monitoring consumer values issues statements, given the high level of community concern in this area. Specifically, it should: monitor and assess the effectiveness of self- and co-regulatory arrangements; monitor the use of values statements and assess

their ability to convey useful information; and make recommendations on the need for more formal regulation and, if so, its positioning, whether in general consumer protection law or in the Code. But it would not be an enforcement agency for values statements; responsibilities for seeking redress for misleading or deceptive conduct should remain with the consumer protection agencies.

8.32 The following specific functions are suggested for the Bureau; it should:

a. be the primary source of food labelling advice to the Ministerial Council, industry, government and the community in relation to the operation of the Code and existing and emerging food labelling issues and technologies;

b. undertake or commission research relating to new and existing issues in food labelling;

c. educate and inform consumers and industry about labelling requirements and other nutrition and public health initiatives relevant to labelling; assist regulators with compliance; and assist FSANZ with the development and review of labelling standards as necessary;

d. provide information and guidelines that will assist industry to comply with current requirements and support the development and operation of compliance tools (such as computer-generated labels or pre-approvals);

e. be a clearing house for complaints made to it, facilitating their resolution where possible and referring matters to the appropriate jurisdiction for formal enforcement where necessary;

f. monitor and report on food labelling compliance across jurisdictions (e.g., for nutrition, health and related claims, compliance with NIP and FoPL requirements); and oversee self- and co-regulatory arrangements; and

g. monitor consumer values issues claims on food labels and provide a point of contact between the ACCC in Australia and the NZCC and other relevant agencies in relation to food labels that are potentially misleading or deceptive under consumer protection laws.

8.33 The Bureau will need to be resourced. The appropriate level will depend on whether some of these functions are undertaken on its behalf by FSANZ, either independently or under an agreement. For example, FSANZ already monitors labelling compliance. Options also exist for cost recovery and 'user pays' for some of these functions. The backgrounds and expertise of persons appointed to the Bureau should cover the range of areas relevant to its role and to food labelling generally. These areas include compliance and enforcement, standards development, presentation and communication, consumer protection, industry perspectives and public health. However, it is noted that existing expertise in the jurisdictions could assist the Bureau.

8.34 Many of the Bureau's functions will require the cooperation and support of industry and the enforcement agencies of the jurisdictions. In particular, a pre-approval process and computer-generated label service could give industry certainty, provided that the jurisdictions support the Bureau's conclusions and any disagreement is resolved through the Bureau process and not by prosecution. However, even if a prosecution were to be undertaken, the food acts have a general defence of 'due diligence', which could apply in the case of a company that went to the trouble of seeking out the expert body's view and then adhered to advice given.

8.35 Finally, despite the multiplicity of agencies involved, Australia and New Zealand have achieved a great deal in developing national and trans-Tasman uniformity through an arrangement that, for the most part, delivers common standards and obligations together with a largely uniform set of laws. This provides a rare and admirable model of consistency across both a federal system and national borders. But common standards will not in themselves ensure that the labelling requirements of the Code will be complied with by industry or that enforcement is consistent and appropriate. For this to happen, it is necessary to build on the existing achievements. The Panel believes that a consistent, appropriate and considered approach to the administration and enforcement of labelling standards will be achieved through: the ongoing reforms to compliance and enforcement; the encouragement of a regulatory environment where labelling obligations are given a high priority by the responsible agencies; and most importantly, the creation of a Food Labelling Bureau.

Recommendation 61:
That a new and effectively resourced entity in the form of a trans-Tasman Food Labelling Bureau be established under the *Food Standards Australia New Zealand Act 1991* to undertake the functions as specified in this Report and more generally to:

a. be the primary contact for, and source of, food labelling information and advice;

b. undertake research into food labelling issues;

c. undertake a general educational role in relation to food labelling issues and requirements;

d. assist industry to comply with labelling requirements;

e. act as a clearinghouse for complaints and facilitate compliance and the resolution of complaints;

f. monitor and report on food labelling compliance; and

g. monitor consumer values issues claims on labels and liaise with consumer protection agencies in relation to confusing, misleading or deceptive food labelling.

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272 See also Implementation Sub-Committee, *Report of the first two years,* 2005.

273 Food Regulation Standing Committee, *Review of the Australia and New Zealand Food Regulation Ministerial Council Consultative Mechanism*, report prepared by Campbell Research and Consulting Pty Ltd, FRSC, Canberra, 2005.

274 NSW Department of Premier and Cabinet, Submission no. 587, p. 2.

275 D Sibraa, Submission no. 141, question 2.

276 Government of South Australia, Submission no. 623, p. 5.

Appendices

Appendix A

Members of the Food Labelling Law and Policy Review Panel

Dr Neal Blewett AC

After a distinguished academic career, including a period as Professor of Political Theory and Institutions at Flinders University, Neal Blewett entered Federal Parliament in 1977 as the Member for Bonython. In 1983 he became Minister for Health in the Hawke government and over the next seven years was the political architect of Medicare, was responsible for the development of Australia's AIDS policies, introduced the first national drugs campaign and worked for a greater emphasis in national health policies on the prevention of diseases. Dr Blewett served later as Minister for Trade and Overseas Development and as Minister for Social Security. Retiring from Parliament in 1994, he became Australian High Commissioner to London in that year, as well as serving between 1995 and 1998 on the Executive Board of the World Health Organization. In recognition of his services to Australian society, he was made a Companion of the Order of Australia in 1995.

Mr Nick Goddard

Mr Nick Goddard is a communications and marketing professional with over 25 years' experience in the food industry. He has solid track record in bringing new and innovative food products to market, and in doing so has developed a good understanding of the challenges and opportunities the existing food labelling laws present to both businesses and consumers. Mr Goddard has a Bachelor of Commerce and an MBA and brings a pragmatic business and solutions oriented approach to the Panel. He is currently Executive Director of an agri-food industry association.

Dr Simone Pettigrew

Professor Simone Pettigrew holds a Bachelor of Economics from the University of Sydney, a Master of Commerce from the University of New South Wales and a PhD in Consumer Research from the University of Western Australia (UWA). She is currently affiliated with the UWA Business School. Her primary research focus is health promotion, specifically in relation to obesity, food marketing, alcohol consumption, ageing and mental health. She is the editor of the *Journal of Research for Consumers*.

Dr Chris Reynolds

Dr Chris Reynolds is a lawyer, with postgraduate qualifications in public health and a PhD from the Department of Community Medicine at Adelaide University. He has taught Constitutional Law, Environmental Law, and Law and Medicine at Flinders University School of Law and the University of South Australia. His main areas of research and consulting have been in public health law and policy and he has advised the Australian Government and State governments on reforms to public health, food legislation, drug and tobacco laws and also in policy relating to HIV/AIDS. Between 2002 and 2005 he was a Director of Research at the National Centre for Public Health Law at Melbourne's Latrobe University and was a Food Standards Australia New Zealand (FSANZ) Fellow until 2004.

Dr Heather Yeatman

Associate Professor Heather Yeatman has 30 years' experience working in areas relating to health, nutrition, the food system and public engagement in policy. After 10 years in the Health Department in South Australia, she joined the University of Wollongong, where she was instrumental in establishing the dietetics program and a new graduate program in public health nutrition. Dr Yeatman was involved in the Australian Food and Nutrition Policy (1992) and has acted as a scientific expert to government and non-government agencies. She has also served as a member on the FSANZ Board. Through these experiences she has developed unique expertise in food and nutrition policy across the spectrum of local, state, national and international levels.

Appendix B

Review of Food Labelling Law and Policy

Terms of Reference

Preamble

The Council of Australian Governments (COAG) has agreed that the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) undertake a comprehensive review of food labelling law and policy using an evidence based approach and without compromising public health and safety. The Ministerial Council has agreed to the review being independent.

In Australia, all three tiers of government have a role in the administration or enforcement of food labelling law. Food labelling policy and standards are also shared with New Zealand under Trans-Tasman treaty arrangements.

Through COAG, all Australian governments have committed to regulatory reform to create a seamless national economy, reduce the regulatory burden without compromising public health and safety and maintain or increase the competitiveness of Australian businesses.

As part of its prevention stream of work in the health policy arena COAG has also agreed to tackle the burden of chronic disease, which raises issues of relevance to the food regulatory system.

Context

For the purposes of this review, the term "food labelling" includes information, representations and claims about food that are or could be, regulated under the Australia and New Zealand Food Standards Code or consumer protection laws.

Laws with respect to food labelling serve a number of important policy purposes. There are a number of different policy drivers impacting on food labelling laws.

Food labelling supports, among other things, the policy objectives of public health and safety and enabling consumers to make informed choices. Examples of labelling requirements aimed at safety include 'use by' dates and requirements for disclosure of allergens. Food labelling provides information designed to inform nutritional choices (nutrition information panels). In some cases, labelling has been used to provide information in response to consumer demand (e.g. labelling of genetically modified

foods). Some labelling requirements have been imposed to enable product identification and facilitate traceability.

There are also diverse demands for labelling laws from consumer, public health and food industry stakeholders.

The policy drivers differ for laws imposing mandatory labelling requirements (which are usually sought by consumer or public health stakeholders) or standards creating voluntary labelling permissions (which are usually sought by industry – e.g. to make product claims).

There are tensions between the varying objectives sought to be achieved from food labelling laws by the different stakeholders in the food regulatory system.

Calls are regularly being made for new labelling requirements to address a range of issues of concern to diverse groups within the community. Increasingly these do not relate to the characteristics of the food itself, but are about food production systems or attributes.

However, all food labelling requirements impose costs. Therefore it is important that all food labelling laws –

i. are evidence based and effective at achieving their policy purpose;
ii. do not impose unjustifiable regulatory burdens on business; and
iii. are capable of being enforced in an effective, proportionate and consistent manner.

There is a finite amount of information on labels that people can absorb. Poorly designed labels can confuse rather than assist consumers. There is also a finite amount of information that can reasonably be included on food packaging.

At present, each request for change to food labelling standards is assessed on a case by case basis. There is no process for examining the cumulative burden and cost of incrementally increasing labelling requirements.

There is limited scope within the food regulatory system for innovative approaches to labelling issues. Food regulators currently have a very limited range of enforcement tools which makes proportionate enforcement of labelling requirements difficult to achieve.

A stated objective of food laws is to prevent misleading or deceptive conduct in relation to food. The prevention of misleading or deceptive conduct is also an objective of general consumer protection laws. There is overlap between these two areas of law.

Both business and consumer stakeholders have voiced concern about variation in enforcement of food labelling laws across jurisdictions.

Matters for Review

The review panel will be required to:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements and appropriate and consistent enforcement.
5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.

Appendix C

Review of Food Labelling Law and Policy

A Summary of the Submissions to the Initial Public Consultation

The key themes of the submissions received during the initial consultation formed the basis of the Panel's Issues Consultation Paper, which raised a number of questions to prompt further dialogue with stakeholders on a range of food labelling issues. The Issues Consultation Paper was released for public comment on 5 March 2010 as part of the Panel's second round of consultation, which concluded on 14 May 2010.

1. Background

At the request of the Council of Australian Governments (COAG), the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) engaged an independent panel of experts to undertake a comprehensive review of food labelling law and policy using an evidence-based approach and without compromising public health and safety.

On 23 October 2009 the Ministerial Council released the Terms of Reference for the Review of Food Labelling Law and Policy, which required the Panel to:

1. Examine the policy drivers impacting on demands for food labelling.
2. Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory intervention?
3. Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
4. Consider principles and approaches to achieve compliance with labelling requirements and appropriate and consistent enforcement.
5. Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against terms of reference 1-4 above.
6. Make recommendations to improve food labelling law and policy.

The first round of public consultation commenced on 26 October 2009, when interested stakeholders were invited to make brief written submissions on food labelling issues to be considered as part of the Review. Stakeholders were asked to provide submissions that were accompanied by supporting data and evidence and that were within the scope of the Terms

of Reference for the Review. Submissions could be provided to the Panel by email to **foodlabellingreview@health.gov.au** or by post. This initial period of public consultation closed on 20 November 2009.

2. Introduction

This Report provides a summary of the submissions received by the Panel during this initial period of public consultation and captures the key issues discussed in these submissions. While this analysis does not describe in detail the full spectrum of topics raised by stakeholders, the Panel has remained committed to examining all of the issues raised in the submissions as part of its broader public consultation strategy.

3. Submissions Received

The Panel received more than 6,000 submissions from stakeholders during the initial period of public consultation. The number of submissions received from the main stakeholder groups is summarised in Table 1. These stakeholder groups include individual consumers; food and related industries; government agencies and health services; non-government organisations; research and education institutions; and Members of Parliament and political parties.

Table 1: Submissions received from each main stakeholder group during the initial consultation period

Stakeholder Group	Number of Submissions
Individual Consumers	6486
Food and Related industries	52
Non-Government Organisations	48
Government Agencies and Health Services	16
Research and Education Institutions	11
Members of Parliament and Political Parties	7

Most submissions were from individuals and organisations in Australia and New Zealand, with a small number from the United Kingdom and the United States of America. The geographical origins of the submissions received by the Panel are summarised in Table 2. Most submissions received from individual consumers were provided by email and for many of these it was not possible to determine the geographical origin with certainty. On this basis, information about the geographical origin of individual consumer submissions has not been included in Table 2.

Table 2: Submissions received during the initial consultation period by geographic origin*

Stakeholder Group	Number of Submissions					
	Australia	NZ	Trans-Tasman	United Kingdom	United States of America	TOTAL
Food and Related Industries	41	4	6	1	-	52
Non-Government Organisations	37	7	4	-	-	48
Government Agencies and Health Services	14	1	-	1	-	16
Research and Education Institutions	9	-	1	-	1	11
Members of Parliament and Political Parties	6	-	1†	-	-	7
TOTAL	**107**	**12**	**12**	**2**	**1**	**134**

*does not include submissions from individual consumers

†joint submission from Australian and New Zealand-based political parties

4. Key Issues Raised in Submissions

Stakeholders discussed an extensive range of food labelling topics in their submissions. The key areas included the drivers of food labelling, the role of government and approaches to regulation, information on food labels to protect public health and safety, consumer demand for information about food products, comprehensibility and visual aspects of food labels, industry compliance with food labelling legislation, the enforcement of food and consumer law and international trade and obligations.

Key drivers of food labelling: Stakeholders recognised several main drivers for the information provided on food labels. These drivers were health promotion and preventative health objectives, the protection of health and safety, satisfying consumers' desire for information, preventing misleading or deceptive information, ensuring fair trade and industry competitiveness and supporting innovation in the food industry. A strongly held view of many stakeholders was that the protection and promotion of public health and safety should take priority over any other food labelling drivers or objectives. A number of submissions argued that public health should also be seen broadly as promoting and maintaining good health rather than simply preventing food-related illness.

Role of government and approaches to regulation: Across the stakeholder groups, opinions were varied in relation to the optimal role for governments concerning the information provided on food labels. Some stakeholders supported the responsive approach to regulation described by the National

Preventative Health Taskforce, which is characterised by the exploration of voluntary and self-regulatory schemes in the first instance and a progression through to mandatory labelling requirements if these schemes are deemed ineffective or inappropriate. Many stakeholders held the strong view that the priority objective for government regarding food labelling was to protect the health and safety of consumers. Stakeholders' views diverged on the issue of satisfying consumers' demand for information on food labels beyond information related to health and safety. Some argued that providing information on a food label to address consumer desires on the grounds of values or ethics, such as food production methods or country of origin, should be subject to market forces and self-regulation by industry. Other stakeholders held the view that governments have a role in ensuring consumers can use food labels to access all desired information about food products. Some submissions argued that frequently-used food labelling terms, such as 'free range' and 'organic', should be formally defined to prevent misleading or deceptive labelling and to assist enforcement agencies. Respondents from across the stakeholder groups saw value in the development of a whole-of-government food and nutrition policy to provide the core principles for future government decisions about food labelling.

Public Health and Safety: Stakeholders raised a range of issues concerning the role of food labels in protecting and promoting the health and safety of consumers. The key issue raised by stakeholders concerning consumers' safety was in relation to the labelling of additives and allergens in foods. Stakeholders who raised concerns about identifying food allergens and additives in food products were seeking clearer presentation of this information on food labels to give consumers with food allergies or intolerances greater confidence and certainty when making food purchasing decisions. With regard to food additives, many stakeholders supported the consistent use of numeric codes for easy identification of specific additives. Stakeholders expressed dissatisfaction with 'may contain…' statements on labels to indicate the possible presence of allergens in a food, as this can unnecessarily limit food choices for consumers living with food allergies. These stakeholders held the view that manufacturers should be required to declare whether or not known allergens were present in a food to provide certainty for consumers.

Stakeholders' perspectives varied in relation to the role of the food label in providing health promotion information to consumers. There was extensive discussion in the submissions about the use of claims on food labels to communicate health and nutrient information and the opportunity for food manufacturers to use health claims as a tool for differentiating their products from those of competitors and to promote the competitiveness of the food industry more generally. Some stakeholders did not support the use of health claims on foods on the basis that claims target specific components of a food and may detract from consumers' consideration

of the qualities of the whole food. While some stakeholders opposed the use of health claims, many held the view that, should health claims be permitted in future, government had a role in regulating their use to achieve the greatest health benefit for consumers.

Some submissions described numerous approaches to providing front-of-pack interpretative nutrition information on food labels to guide consumers' food choices. Some stakeholder groups were in favour of a front-of-pack scheme using a multiple traffic light approach. This type of approach uses a colour scheme to identify the relative amounts of risk-associated nutrients in a food product. Other stakeholder groups supported the continued use of voluntary front-of-pack measures that display a food's energy and nutrient per serve, such as the Daily Intake Guide scheme developed by the Australian food industry, which is similar to the Guideline Daily Amounts system used in some other countries. Advocates of the multiple traffic light system were generally supportive of its implementation as a uniform mandatory front-of-pack scheme. Arguments for a mandatory interpretative scheme related to the need to reach consumers with varying degrees of literacy and numeracy and ensure that health-related information on food labels could be universally understood to help overcome health inequities in the population. Stakeholders also suggested that a mandatory front-of-pack scheme may become an impetus for food reformulation by industry and ultimately result in a healthier food supply. Many stakeholders supported the development of robust criteria to underpin any interpretative front-of-pack scheme introduced by government, which could be readily adapted for use across a variety of food product categories.

Across the submissions there was a difference of opinion about the labelling of alcohol with nutrition information and health warning statements. Some stakeholder groups outlined concerns about the effects of alcohol consumption on health outcomes and strongly supported the use of nutrition information and health warnings on labels to educate consumers. Other stakeholders disputed the effectiveness of health-related information on alcoholic beverage labels as a consumer education measure and asked the Review to take into account the impact that unique domestic labelling requirements may have on international trade. Some submissions argued that alcohol should not be regulated as a food but in some other way.

Consumer Information: Consumers seek information about food products to satisfy a range of health-related needs and to make food purchasing decisions that align with personal values and beliefs. In the submissions, the key points of discussion related to consumers' access to comprehensive information about the use of food technologies (specifically genetic modification, nanotechnology, and irradiation of food), animal production methods, the impact of food production and transport on the environment, the use of palm oil as a food ingredient, the geographical origin of food ingredients and the labelling of allergens and additives in food. Many of

these issues were raised in several email campaigns submitted to the Panel. Stakeholders presented arguments for the mandatory labelling of foods to address the aforementioned information needs, among others, from the perspective that consumers are entitled to information about the food they consume.

Stakeholders were divided on whether country of origin labelling should be mandatory, but there was broad support for greater specificity in the use of the term 'Made in Australia'. Mandatory country of origin labelling was supported by some stakeholders in the interest of domestic food producers' and manufacturers' viability and competitiveness and to facilitate consumers' informed choice when make food purchasing decisions. With regard to the labelling of animal-derived foods, many stakeholders raised concerns that food production terms such as 'free range' and 'organic' had the potential to mislead consumers if not well defined and understood. The submissions acknowledged the practical constraints of providing additional information on food labels, such as package size and the cost of implementing label changes. Proponents of voluntary approaches to providing additional information to consumers argued that the food industry can operate in a more efficient and competitive manner in a regulatory environment that enables food manufacturers to voluntarily label food products in response to dynamic consumer demands. Providing consumers with additional product information on food labels, such as the geographical origin of ingredients or the food production methods, can be a means for food producers to promote their products and gain a competitive edge.

Presentation of Food Labels: Submissions highlighted low literacy and numeracy in the population as a major barrier to many consumers' understanding of the information presented on food labels. On this basis there was support from numerous stakeholders for a front-of-pack nutrition labelling system that would use colour to provide a clear visual representation of different food products' nutritional value, with a view to promoting healthier food choices by consumers. General legibility issues such as the placement of information and the size and colour of labelling fonts were also discussed by stakeholders. In the context of the discussion about food label presentation, some stakeholders noted that there is a physical limit to the amount of information that can be provided on food labels without compromising legibility and the optimal layout of the information.

Compliance and Enforcement: There was widespread support for greater consistency in the enforcement of food labelling requirements. However, there were differences of opinion as to whether their monitoring and enforcement should become the responsibility of a stand-alone national body or remain with the states and territories and New Zealand as at present. There was strong support to expand the role of Food Standards Australia New Zealand (FSANZ) to provide additional guidance on food

standards to industry and interpretative rulings to facilitate jurisdictions' monitoring and enforcement activities.

International trade and obligations: Some stakeholders acknowledged Australia and New Zealand's international responsibilities with respect to international trade agreements and the international food code, the Codex Alimentarius. There was extensive commentary about the costs to industry of implementing different labelling approaches for domestic and international markets and the implications for international trade of imposing additional labelling requirements for the domestic food market.

5. Key Issues Raised by Stakeholder Groups

This summary provides a brief overview of the contributions from the key stakeholder groups in their submissions during the initial consultation period.

Individual Consumers: More than 6,000 submissions were received from individual consumers. Most of these were part of large coordinated campaigns on several specific issues. As a result, the Panel received many submissions with identical messages. The largest campaigns during the initial public consultation period were concerned with the comprehensive disclosure of information on food labels about the use of genetically modified foods, foods produced using nanotechnology and the declaration of additives and allergens on food labels, which together generated more than 5,000 submissions from individual consumers and constituted eighty-five per cent of all submissions received by the Panel during the initial consultation period. In other submissions from individual consumers, there were arguments for the mandatory labelling of animal production methods and concerns expressed about the potential to mislead consumers with production terms such as 'free-range' and 'organic'. It was suggested by submitters that this issue could be remedied by entrenching clear definitions of specific food production terms in legislation. The use of palm oil as a food ingredient was of concern to some consumers, who asked that foods containing palm oil be specifically labelled as such. There was some discussion about nutrition labelling and support for the implementation of an interpretative front-of-pack nutrition labelling scheme. Country of origin was also the subject of commentary, with support for mandatory labelling for a food's geographical origin, in addition to calls for greater clarity of the terms used to describe foods produced domestically.

Food and Related Industries: Fifty-two submissions were received from food industry stakeholders. These submissions originated from industry representative bodies, food producers and manufacturers, food industry consultants and agricultural companies. Across the submissions, industry stakeholders asked the Panel to be mindful of the cumulative impact of food labelling regulation on the food industry and to consider reasonable timeframes for introducing labelling changes, with particular regard for

small businesses. Stakeholders generally supported the development of a whole-of-government food and nutrition labelling policy as a basis for future government decisions on food labelling. There was also widespread support for regulatory approaches that are in accordance with the COAG Principles of Best Practice Regulation. More specifically, some industry stakeholders suggested that mandatory labelling requirements are only justified to prevent or remedy market failure. These stakeholders argued that, with the exception of information to protect the health safety of consumers, it was reasonable for the additional information sought by consumers to be met by the food industry through voluntary labelling schemes. Some stakeholders suggested that some types of information could be provided to consumers through mediums other than the food labels by using websites and exploring emerging technologies such as mobile phone software.

Industry stakeholders expressed concern about the consistency of the enforcement of food labelling requirements across the jurisdictions and some stakeholders supported the establishment of a national enforcement body for food labelling. There was some suggestion that the responsibilities of FSANZ could be expanded to include an interpretative advice function to educate industry and facilitate the activities of enforcement agencies. Stakeholders encouraged greater consistency of domestic labelling requirements with the international food code, the Codex Alimentarius, to facilitate the international food trade and minimise the cost to industry of developing food labels for different markets.

There was widespread support for the use of nutrition and health claims on food labels as a means of providing health-related information to consumers and also as a means for food producers to differentiate their products. There was strong opposition to the introduction of a mandatory front-of-pack nutrition labelling scheme and stakeholders cited the existing voluntary front-of-pack labelling schemes developed by industry as a demonstration of the food industry's willingness to assist consumers in making healthier food choices. There was a lack of support from stakeholders for the inclusion of nutrition information or health warning statements on alcoholic beverages on the basis that additional domestic requirements for the labelling of alcoholic beverages may inhibit international trade.

Industry stakeholders noted consumers' confusion regarding some commonly-used labelling terms to denote country of origin and food production methods. In light of concerns about misleading information on food labels, it was suggested that there needed to be improved management of consumer expectations in relation to terms like 'free range', 'organic' and 'Made in Australia'. Within this stakeholder group, there were strong arguments both for and against mandatory country of origin labelling, with stakeholders recognising its potential benefits for domestic producers and challenges for importers.

Non-government organisations: Forty-eight submissions were received from the non-government sector. These originated from a wide range of organisations and interest groups in the areas of public health, food allergy and safety, animal welfare, environment protection, religious denominations and consumer representation. The diverse nature of this stakeholder group resulted in the extensive range of issues highlighted in these submissions. There was support for an enhanced role for FSANZ to include responsibility for providing interpretative rulings to jurisdictions on food labelling issues. In the area of public health and health promotion, stakeholders argued for the mandatory labelling of alcoholic beverages with health warning messages and information about nutrient content. It was argued that public health and safety should be the primary objective of any food labelling measure and there was a need for a clear definition of public health which was wider than just preventing food-borne illness. There was also widespread support for a whole-of-government food and nutrition policy to provide a basis for future food labelling decisions. Although not all stakeholders supported the use of health claims on food labels, there was general agreement that government should be responsible for regulating health claims, including the development of qualifying criteria to evaluate whether certain claims can be used. There was substantial support for a mandatory uniform front-of-pack nutrition labelling scheme, to be implemented as a complement to the existing nutrition information panel. Stakeholders discussed the mandatory provision of nutrition information on restaurants menus, with some support for such a measure.

In the interest of informed choice for consumers, some submitters strongly supported the mandatory provision of information on food labels about the animal production methods used for animal-derived foods, the labelling of palm oil when used as an ingredient and the labelling of manufacturing technologies such as genetic modification, nanotechnology and irradiation. A number of non-government stakeholders suggested that the definitions of commonly-used food labelling terms such as ‘free range’ and ‘organic’ should be embedded in legislation. In relation to the enforcement of food labelling regulations, there was some support for the establishment of a national enforcement body that would deal specifically with food labelling issues. A number of stakeholders also supported the responsive approach to regulation described by the National Preventative Health Taskforce, to allow industry an opportunity to demonstrate whether self-regulation could satisfy consumer demands for specific information. There were specific concerns raised in the submissions about the presence of allergens and additives in foods and the suggestion that ‘may contain ...’ statements on food labels can result in the unnecessarily limited food choices for many people living with food allergies and sensitivities.

Government agencies and health services: Sixteen submissions originated from health services and government agencies at the local, state and

Commonwealth levels. Some agencies showed support for the use of pre-approved and evidence-based health claims on foods. There was substantial commentary concerning front-of-pack nutrition labelling, with specific support for an interpretative system such as the multiple traffic light scheme. Many agencies sought greater consistency in the enforcement of food labelling regulations by jurisdictions. Government stakeholders also asked that the Panel consider the implications of labelling requirements for food affordability in the general population and the cumulative impact of labelling regulations on food businesses. There was support for mandatory labelling requirements that ensured compliance with international trade obligations and it was suggested that other consumer-driven labelling needs should be addressed by the food industry in a voluntary capacity. Stakeholders supported the development of a clearer definition of public health and a whole-of-government approach to shape future government decisions about food labelling.

Researchers and Education Institutions: Eleven submissions were received from individual researchers, research institutes and universities. The commentary in these submissions mainly focused on front-of-pack nutrition labelling, nutrition information panels, health claims and the enforcement of food labelling regulations. There was support for mandatory front-of-pack nutrition labelling, such as a traffic light scheme, with the view that this should be underpinned by government-regulated qualifying criteria. It was argued that consumers with low literacy in particular would benefit from such an approach. Some stakeholders felt that the existence of numerous voluntary front-of-pack nutrition labelling schemes created greater confusion for consumers. It was suggested that the mandatory nutrition information panel should be retained and that it would be complemented by an interpretative front-of-pack scheme. Some stakeholders supported the introduction of uniform standard serve sizes for the presentation of the nutrition information panel to enable consumers to more readily compare the nutrients in different food products. Those stakeholders who supported the use of health claims argued that there must be strong evidence to substantiate a given claim and that qualifying criteria regulated by government are necessary to protect consumers. Some stakeholders emphasised the need for more proactive enforcement of food labelling requirements by jurisdictions. Stakeholders also encouraged collaboration between government and industry to determine future approaches to food labelling issues.

Members of Parliament and political parties: Seven submissions were received from Members of Parliament and political parties. Broadly, these submissions presented arguments for mandatory labelling to meet consumer information demands. Stakeholders supported the labelling of foods to indicate the use of specific food technologies, including genetic modification, irradiation and nanotechnology. Also on behalf of consumers,

there was support for the labelling of palm oil when used as an ingredient in food, as well as the labelling of animal-derived food ingredients and animal production practices. Some of these stakeholders voiced skepticism regarding the effectiveness of industry self-regulation to satisfy consumer demand for a range of information about food products. Some stakeholders in this group expressed support for the introduction of an interpretative front-of-pack nutrition labelling scheme.

6. Outcomes of the Initial Consultation Period

The key themes of the submissions received during the initial consultation formed the basis of the Panel's Issues Consultation Paper, which raised a number of questions to prompt further dialogue with stakeholders on a range of food labelling issues. The Issues Consultation Paper was released for public comment on 5 March 2010 as part of the Panel's second round of consultation, which concluded on 14 May 2010.