Issues Consultation Paper:
Food Labelling Law and Policy Review

5 March 2010

INTRODUCTION

Various reviews of the food regulation system suggest that food labelling has been an ongoing issue of concern for the food industry, consumers and government. Issues regularly raised include:

- difficulties consumers have in understanding and using information on labels;
- the cost to business and consumers of meeting labelling standards;
- a lack of or inconsistent enforcement of labelling laws across jurisdictions; and
- the accuracy and truthfulness of labelling.

In response, 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 (the Review) using an evidence-based approach and without compromising public health and safety. The independent Review Panel undertaking the Review comprises the former Australian Health Minister, Dr Neal Blewett AC, public health law academic Dr Chris Reynolds, economic and consumer behaviour expert Dr Simone Pettigrew, food and nutrition policy academic Associate Professor Heather Yeatman, and food industry communications, marketing and corporate affairs professional Nick Goddard.

This Issues Consultation Paper, developed by the Review Panel, summarises the issues that have been raised in the first round of submissions to the Review, as well as issues in the literature and media in recent years. This Paper elaborates on the Review's Terms of Reference (included at Appendix 1) and has been prepared to stimulate thinking and debate. The consultation process will involve submissions and public meetings which will be held in all capital cities in Australia and in New Zealand from 17 March to 7 May 2010. The schedule for consultation meetings and registration is now available on the following website: www.foodlabellingreview.gov.au

The Review Panel is using an evidence-based approach in reviewing submissions and considering options in order to ensure that final recommendations are backed by robust support which will withstand critical review. Stakeholders are encouraged to make submissions in response to the questions raised and to provide appropriate evidence. Submissions and further research will be used to shape the final report that is due to the Ministerial Council and COAG in late 2010 and early 2011 respectively.

Submissions within the Terms of References of the Review that add to the deliberation and discussion and meet the submission guidelines (included at Appendix 2) will be made publicly available on the www.foodlabellingreview.gov.au website. Please also note that all submissions are subject to the *Freedom of Information Act 1982* in Australia and the *Official Information Act 1982* in New Zealand. If you consider that all or part of your submission should not be released, please make this clear when making your submission and indicate the grounds for withholding the information. A completed cover sheet must be included with your submission (included at Appendix 2). Copyright will continue to reside in the author/s of a submission.

Deadline for input: No later than close of business 14 May 2010:

Submissions should where possible be lodged through the Food Labelling Review Website www.foodlabellingreview.gov.au	To make alternative arrangements please contact the Review Secretariat (by email: FoodLabellingReview@health.gov.au or post: MDP 150, GPO Box 9848 Canberra ACT 2601.

PART 1: CONTEXT

1.1 The objectives[1] of food standards in Australia and New Zealand are: to provide a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand; to secure an effective, transparent and accountable regulatory framework, within which the food industry can work efficiently; and to ensure the provision of adequate information relating to food to enable consumers to make informed choices.

1.2 Primary responsibility for determining and administering food standards in Australia and New Zealand lies with Food Standards Australia New Zealand (FSANZ).

1.3 Enforcement of food labelling in Australia is shared at the national level between the Australian Competition and Consumer Commission (ACCC), as part of its general responsibility for consumer protection, and by the Australian Quarantine Inspection Service (AQIS) in relation to foods imported into Australia. State authorities and local government bodies, supported by the Implementation Sub-committee (ISC) are responsible for enforcement of the food labelling standards at the regional and local level. In New Zealand, responsibility for enforcement lies with the New Zealand Food Safety Authority (NZFSA) supplemented by the New Zealand Commerce Commission.

1.4 The Review must be cognisant of and pay due respect to international labelling requirements, both current and pending, as outlined in Codex Alimentarius.[2] This is an important external consideration as Australian produced and labelled food is increasingly exported, while domestic labelling requirements should not create unnecessary barriers to trade.

1.5. The focus of this review is not on food standards in general but on the labelling of food.[3] Food labels[4] are but one part of the responsibilities of FSANZ. The labelling standards have two distinctive characteristics that distinguish them from most of the other standards. First, they are mostly consequential on other standards and second, they are the major interface between consumers and governments and industry. Issues and determinants are also different for labelling than for other food standards. Labelling raises questions of freedom of choice and the right to know. It also raises questions of consumer awareness and how effectively messages can be conveyed.

[1] Section 3 *Food Standards Australia New Zealand Act 1991*
[2] Food Labelling (Codex Alimentarius)
[3] Food labelling includes information, representation and claims about food that are, or could be regulated under the Australia New Zealand Food Standards Code or consumer protection laws.
[4] A label, with respect to food, means: any tag, brand, mark or statement in writing or any representation or design or other descriptive matter on or attached to or used or displayed in connection with or accompanying any food or package (Model Food Act – Annex A).

PART 2: FOOD LABELLING - OVERVIEW

Why label food?

2.1 For food manufacturers, the food label is perhaps the most critical communication tool to convey relevant product attributes to a potential consumer. Its role is most significant at the point of sale. For many brands, it may be the only communication vehicle available to 'speak' to the consumer.

2.2 Food labelling interventions by governments are designed to:

- Protect the health and safety of consumers;
- Respond to consumer demand for food information;
- Provide a fair playing field to competitors in the food industry; and
- Advance government objectives relevant to food.

2.3 Consumers demand food labelling to provide them with accurate information across a wide field of needs and interests to make informed choices.

2.4 The crux of this Review will be to address the tensions between fair and competitive trade in the market, the minimisation of the regulatory burden for business, the securing of government objectives in food labelling and the needs of consumers in order to make informed choices.

Government drivers impacting on Food Labelling

2.5 The body entrusted to determine and administer food standards is FSANZ whose objectives in descending priority order when developing or reviewing food standards are:

(a) the protection of public health and safety;
(b) the provision of adequate information relating to food to enable consumers to make informed choices; and
(c) the prevention of misleading or deceptive conduct.[5]

2.6 The sections that follow explore the primary issues of each of the objectives of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) in relation to labelling.

2.7 The term 'public health and safety' is not defined in the FSANZ Act. A narrow interpretation could mean the avoidance of illness and death resulting from the consumption of unsafe food. However, public health and safety can be interpreted more broadly. The National Public Health Partnership defined public health as 'the organised response by society to protect and promote health, and to prevent illness, injury and disability. The starting point for identifying public health issues, problems and priorities, and for designing and implementing interventions, is the population as a whole, or population sub-groups'.[6]

[5] S18 *Food Standards Australia New Zealand Act 1991*
[6] National Public Health Partnership (http://www.dhs.vic.gov.au/nphp/publications/broch/defin.htm)

2.8 The term public health will be used in this paper as the general term encompassing two distinct subsidiary elements: health safety and health promotion. In the context of food labelling, health safety refers to protection of the public from acute episodes of ill health resulting from contamination, decay or potentially serious reactions to food ingredients. Health promotion refers to activities designed to inhibit chronic disease by the promotion of healthy eating. This approach is consistent with the strategic direction endorsed by the Ministerial Council in May 2008.[7]

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

2.9 FSANZ is also responsible for ensuring the provision of adequate information relating to food to enable consumers to make informed choices. The available space on food labels is limited and priorities for consumer information need to be established.

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

2.10 The third objective of FSANZ is the prevention of misleading and deceptive conduct. Without accurate and consistent labelling, a level playing field for manufacturing would be undermined. Equally, consumer expectation is that statements on food labels are true and accurate. The relevant consumer protection laws that are outside the food regulatory system (e.g., *Trade Practices Act 1974* (TPA) in Australia and the *Fair Trading Act 1986* in New Zealand) serve to strengthen this aspect of the FSANZ Act. The TPA is enforced by the ACCC which seeks to promote consumer protection. A key aspect of the consumer protection regime under the TPA is the prohibition on misleading and deceptive conduct.

Q3. How can accurate and consistent labelling be ensured?

2.11 The benefits of intervention in achieving these three objectives must be weighed against their costs. These are costs not just borne by business but are likely to be borne by the community as a whole. While the calculation is never easy, the current COAG regulatory agenda requires the benefits of such intervention be weighed against their costs. In this calculation, the importance of evidence-based assessment cannot be overstressed.

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

2.12 In each case of intervention, there needs to be a careful assessment of the most appropriate tools to be used. The spectrum ranges from mandatory intervention to ensure a 'level playing fields', through to the encouragement of voluntary codes of practice, industry driven self regulatory approaches and programs of community education.

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

[7] Overarching Strategic Statement for the Food Regulatory System, p3

PART 3: KEY ROLES OF FOOD LABELLING

3.1 All packaged foods (with a few exceptions) require labelling, though requirements are minimal for some simple packaged foods. The exceptions[8] include: packages that are very small; food made and packaged on the premises where it is sold; food packaged in the presence of the customer or packaged and delivered at the customer's request. Food sold in restaurants and most unpackaged foods are exempted from most labelling requirements. Some unpackaged food – certain fruits, vegetables, seafood and pork products – require country of origin labelling;[9] food which has been genetically modified[10] or irradiated[11] must be labelled as such or have a label display; and certain mandatory declarations,[12] advisory and warning statements[13] that apply to unpackaged foods must be provided on, or in connection with, the display of the food.

Q6. Is this a satisfactory spectrum for labelling requirements?

Health Safety

3.2 The most obvious driver of food labelling is the necessity to provide health safety, that is, to protect the public from direct and immediate threats to their health as a result of contamination, decay or potentially serious reactions to food ingredients.

3.3 Certain functional labelling requirements are primarily designed to protect health safety and arouse little controversy (eg product identification, batch/production lot identification and contact details of producer or importer).

3.4 Consensus also appears to exist over the general appropriateness of the other health safety labelling requirements – use by dates, identification of allergens, directions for use and storage and possibly preparation. However, there is some misunderstanding and / or disagreement over the adequacy, presentation and interpretation of these requirements.

Q7. In what ways could these misunderstandings and disagreements be overcome?

Health Promotion

3.5 Health promotion can be a driver for food labelling, but here the health benefits are usually indirect, long-term and may be disputed. Key nutrition messages may be reflected on labels in a voluntary manner by actions of interested manufacturers, but this option may not provide consistent messages to the public if the information is presented in inconsistent ways. Governments may also mandate certain information or disclosures on labels to complement wider health promotion initiatives. Both the National Health and Hospitals

[8] Standard 1.2.1 - Application of Labelling and Other Information Requirements
[9] Standard 1.2.11 - Country of Origin Requirements
[10] Standard 1.5.2 - Food Produced Using Gene Technology
[11] Standard 1.5.3 - Irradiation of Food
[12] Standard 1.2.2 - Food Identification Requirements
[13] Standard 1.2.3 - Mandatory Warning and Advisory Statements and Declarations

Reform Commission and the National Preventative Health Strategy, in their recent reports, recommended a 'drive for change within the food supply' to provide access to evidence based, consumer friendly information to support healthier food choices.[14]

3.6 On-pack sources of information used by consumers to facilitate healthy food choices include both the mandatory (nutrition information panels (NIP) and the listing of ingredients) and voluntary indicators (percentage daily intake guides and other product claims). However, the amount and complexity of the information can be daunting to consumers.

Q8. In what ways can food labelling be used to support health promotion initiatives?

3.7 Concerns were raised in a number of submissions relating to the adequate disclosure of ingredients (eg colourings and flavourings, processing aids, allergens, trans fats, palm oil) and the way they are represented (eg code numbers, scientific versus generic names).

Q9. In what ways can disclosure of ingredients be improved?

3.8 At present, producers are severely restricted in the health claims they can make about their products. They are restricted in relation to the general health claims they can make and cannot make a claim that links a food to reducing the risk of a particular disease. It could be argued that provided there is objective evidence for the claim, such claims could improve the health of the community and that a less restrictive approach could be adopted. Such permitted health claims can also augment broader public health messages (e.g., 'high in calcium for healthy bones').

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

3.9 If further health claims were to be permitted on food labels, this may cause inequities for the complementary medicine industry which is restricted currently under the TPA in the labelling claims it can make.

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

3.10 Statements regarding potentially negative effects of a product may need to be included to balance the information being provided – for example should a low fat claim be allowed if the product has substantial amounts of sugar and/or salt to provide flavour without a corresponding warning?

[14] The Strategy: Obesity, September 2009; and A Healthier Future For All Australians, Final Report, June 2009 p18

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

Consumer Information

3.11 The second objective of FSANZ in the development of food standards supports the provision of adequate information for consumers to make informed choices. This objective requires FSANZ to respond to consumers' concerns, including those that extend beyond public health. However, the extent and the form of such labelling is a matter of much debate. The main issues that were raised in submissions were country of origin labelling (CoOL), environmental sustainability, animal welfare, methods of production (eg genetic modification, irradiation and nano-technology) and definitions of commonly used terms on food labels.

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

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

3.12 CoOL of food was introduced to enable consumers to make informed choices. However, CoOL applies only in Australia and not in New Zealand. It applies to certain products, namely packaged and a limited range of unpackaged foods - pork, seafood (not chicken or beef), fresh fruit and vegetables.

Q15. What criteria should determine which, if any, foods are required to have country of origin labelling?

3.13 A related issue is the terminology used to describe food manufactured, at least in part, in Australia. There is consumer desire for clarification of the terms used such as 'Australian made/Made in Australia', or 'Australian produced/Product of Australia'.[15]

Q16. How can confusion over this terminology in relation to food be resolved?

3.14 Concerns were also raised in a number of submissions relating to claims like 'natural' or 'lite' and that other terms like 'virgin' olive oil and 'organic' are not defined in the Food Standards Code.

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

[15] Editorial note in sub-clause 2(1) of Standard 1.2.11 - Country of Origin Requirements

3.15 Animal welfare and environmental concerns drive many of the demands for labelling in relation to methods of production.

Q18. What criteria should be used to determine the legitimacy of such information claims for the food label?

3.16 Certain technological developments in food production – genetic modification (GM), irradiation and nano-technology – have raised consumer concerns relating to these technologies that have led to calls for disclosure on food labelling. However, caution needs to be exercised in order that the development and application of these and other innovative technologies are not unduly inhibited.

Q19 In what ways can information disclosure about the use of these technological developments in food production be improved given the available state of scientific knowledge, manufacturing processes involved and detection levels?

Alcohol

3.17 Alcohol labelling, which is also governed by the Food Standards Code, presents a further issue. The majority of those referring to alcohol in their submissions, tended to treat it as a food product of 'a very special nature… [having] many unique characteristics'. Some argued that alcoholic beverages should not be treated as food at all and dealt with through regulatory arrangements other than FSANZ. Indeed, alcohol is only partially covered by the labelling requirements as it is exempted from the mandatory nutrition information panels and the requirement to list ingredients. A further issue for consideration is the recommendation by the National Preventative Health Strategy 'to require health advisory information labelling on containers and packaging of all alcohol products to promote safer drinking'.[16]

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

PART 4: FOOD LABELLING PRESENTATION

Readability:

4.1 The Food Standards Code states that prescribed information on packages should be legible. While minimum font sizes are specified for warning statements (1.5mm or 3mm

[16] National Preventative Health Strategy – Conclusion: Action on alcohol

depending on package size), the relevant Standard merely references the general concept of legibility for other information. It is not stated whether this means legible for a wide range of consumers or the 'average' consumer.

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

4.2 Colour contrast is also important for readability, especially for the nearly one million Australians who are colour blind. Other print-related factors such as font style, reproduction quality, line spacing, multi-lingual labels, use of unfamiliar terms, and text organisation (e.g., placing text at right angles to other text and using blocks of text rather than points) can also reduce consumers' ability to read and use information contained on product labels. With the ageing of the population and the deterioration in vision that comes with age, issues relating to legibility will become more pronounced.

Q22. Are there ways of objectively testing legibility and readability? To what extent should objective testing be required?

Comprehensibility:

4.3 The rights of consumers to information on which to base informed food purchase decisions needs to be balanced against the quantity and complexity of information that can be assimilated. This again raises the question of whether the aim is to meet the needs of the average consumer or extend across a wide range of consumers. In terms of the quantity of information, too much text can deter reading while too little information can result in an 'optimism bias' whereby consumers assume that unmentioned factors are favourable. In terms of complexity, consumers can experience confusion over the meaning of information provided. This is especially the case for numerical data, and even the use of percentages is problematic for a sizeable segment of consumers. The definition of a serving size can also cause confusion.

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

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

4.4 The use of pictorial icons that are well-defined, consistently used, and well-publicised is generally accepted as an effective means of conveying information that would otherwise require lengthy explanations. However, as more use is made of icons by different groups with varying credentials, their usefulness in conveying meaningful information to consumers may diminish.

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

Information format:

4.5 There is continuing debate about the most appropriate information presentation format for food labels. In the case of front-of-pack nutrient content information, this discussion has tended to polarise around the traffic light and percentage daily intake models. Regardless of which presentation format is selected, consistent use by food manufacturers and investment in broadly-based public awareness campaigns will be needed to ensure consumers can effectively comprehend and utilise the information provided.

Q26. What objectives should inform decisions relevant to the format of front-of-pack labelling?

4.6 While foods eaten on the premises have been excluded from food labelling regulations in the past, there is increasing interest in the availability of ingredient and nutrient information in these contexts. Such interest has been fuelled by the increasing incidence of debilitating food allergies, increased consumption of food away from home and a growing awareness of the contribution of fast food meals to excessive energy intake and its attendant health consequences. The professional desire of chefs to preserve the identity of their products and to retain flexibility in food preparation (i.e. not be restricted to a 'recipe') needs to be balanced against consumers' desire for information on which to make choices.

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

4.7 Another related issue is food advertising. The Food Standards Code states that "Advertisements for food must not contain any statement, designs or representations which are prohibited by the Food Standards Code from being included in a label for that food."[17] The sufficiency and enforceability of this provision has been questioned.

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

PART 5: ADMINISTERING AND ENFORCING FOOD LABELLING STANDARDS

5.1 FSANZ has no direct role in the enforcement of food labelling. In Australia the enforcement of food labelling is shared by AQIS, responsible for enforcement for imported foods and the States and Territories. In addition; all traders must comply with the consumer protection provisions set out in the TPA and relevant state and territory fair trading

[17] Food Standard 1.1.1 Preliminary Provisions – Application, Interpretation and General Prohibitions

legislation. Thus, nine separate jurisdictions are responsible for enforcement of the labelling requirements. In New Zealand, responsibility for enforcement lies with the NZFSA supported by the New Zealand Commerce Commission.

5.2 Enforcement responsibilities within jurisdictions are undertaken by a range of agencies (including but not limited to health departments, food authorities and primary production regulators) which administer the laws at a regional level in Australia and nationally in New Zealand. In some cases local councils can be involved but their primary role in food regulation tends to be hygiene issues. Where a complaint is made in a jurisdiction different from that of the manufacturer it is often considered the responsibility of the regulatory authority in the manufacturer's jurisdiction and thus the complaint is referred on to that jurisdiction. Consumer protection authorities such as the ACCC and the offices of fair trading can deal with labelling if they breach consumer affairs laws (typically where they amount to misleading or deceptive conduct).

5.3 The Food Regulation Standing Committee (FRSC) through its sub-committee the ISC, seeks to develop and oversee a consistent approach across jurisdictions to the implementation and enforcement of food regulations and standards from all sources (domestic producers, export-registered establishments or from imports). The ISC developed a 'Strategy for Consistent Implementation and Enforcement' of food regulation in 2005.[18] More recently is has developed the Australia and New Zealand Enforcement Guideline. [19]

5.4 Nevertheless, and despite uniformity in wording, inconsistent interpretation and erratic enforcement of the labelling requirements of the standards across (and within) the jurisdictions was raised by a number of the submissions. Ensuring a common understanding of what they mean and how they should be applied in particular cases is critical to underpin an effective regulatory system.

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

5.5 Uniform enforcement of outcomes in respect of a breach (i.e., the decision how to respond to it; whether by warning, remediation notice, expiation or prosecution) may be even more difficult to achieve. The subjective elements in each case may be considered differently across jurisdictions and different ways of assessing penalty may apply.

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

5.6 It has been suggested that one way of achieving uniformity in the interpretation, administration and enforcement of labelling standards in Australia would be to vest responsibility in a national agency or unit. This could be an existing entity such as FSANZ

[18] The Strategy for consistent implementation and enforcement of food regulation in Australia was endorsed by the Ministerial Council on 28 October 2005.
[19] Australian & New Zealand Food Regulation Enforcement, November 2009

or the ACCC, a new specialist food labelling agency or a separate unit within an agency. The agency or unit would be mindful of on-going links with New Zealand to ensure trans-Tasman consistency.

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

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

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

5.7 Current food labelling regulation is primarily administered through government agencies. There could be other ways of achieving effective labelling, including self regulation, with policing either by the industry or an independent body, or for a co-regulatory arrangement that involves government, industry and community representatives. Models for this exist in related fields such as advertising and some therapeutic goods.

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

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

5.8 There are also 'boundary' or 'demarcation' issues between food units and other agencies in interpreting, administering and enforcing labelling requirements. Specifically, consumer affairs agencies (in Australia mainly the ACCC and in New Zealand the Commerce Commission) can regulate misleading or deceptive food labelling while Standards Australia and Standards New Zealand can define specific terms, eg organic.

Q36. In what ways does such split or shared responsibility strengthen or weaken the interpretation and enforcement of food labelling requirements?

5.9 One boundary or 'demarcation' issue relates to substances that could be regarded either as a food or a complementary medicine. If the latter, the substances are regulated in Australia under the Commonwealth *Therapeutic Goods Act 1989*. If it is a food, the Food

Standards Code applies.[20] Also, different legislation applies in New Zealand, resulting in different approaches to the importation of certain products.

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

5.10 In addition to the general domestic inspection regime, imported foods are also subject to inspection by AQIS at the border. The *Imported Food Control Act 1992* requires foods to comply with the Food Standards Code, including labelling, before they can be sold in Australia. AQIS undertakes the inspections using a "risk based" approach. Consignments of certain "risk foods" (declared on advice from FSANZ) and foods that have previously not complied with the regulations have 100% inspection rates. This rate of inspection reduces once a pattern of consistent compliance is demonstrated.[21] The total number of identified regulatory breaches of imported foods is small, but food labelling compliance constitutes the majority of such breaches. Only risk foods imported from New Zealand are subject to the *Imported Food Control Act.* Thus, all other food from overseas which is imported initially into New Zealand and then into Australia is not inspected.

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

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

Appendix 1: Terms of Reference

Appendix 2: Submission Guidelines

[20] The requirements in the Food Standards Code as opposed to Therapeutic Goods Order 69, General Requirements in the General Requirements for Labels for Medicines

[21] "[o]nce five consecutive consignments have passed inspection, the inspection rate is reduced to 25 per cent; after a further 20 consecutive passes, the inspection rate is reduced to 5 per cent."

APPENDIX 1

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 2

SUBMISSION GUIDELINES

Cover sheet

1. Submissions lodged by email or post must be accompanied by an attached cover sheet. The cover sheet will require you to provide:
   a) the name for publication for the submission;
   b) your contact details should further information or clarification be required;
   c) whether you wish for your submission to be confidential or anonymous;
   d) whether your submission contains third party information relating to individuals;
   e) evidence of consent if your submission contains third party information.
2. Submissions lodged online will also require you to provide the information requested in the cover sheet.
3. Please note that anonymity and confidentiality are not automatic and are possible only through negotiation with the Secretariat.

Lodgement of submissions

4. Submissions may be lodged via:

Online:	www.foodlabellingreview.gov.au
Email:	FoodLabellingReview@health.gov.au
Post:	MDP 150, GPO Box 9848 Canberra ACT 2601

Format of submissions

5. Submissions should be clearly marked ‘Submission’.
6. Submissions sent via post must be either typed or written clearly in black ink on A4 paper.
7. Submissions lodged via email must be in Microsoft Word (DOC), Rich Text Format (RTF) or Portable Document Format (PDF).

Acknowledgement of submissions

8. You can confirm receipt of submissions by contacting the Review Committee Secretariat via email FoodLabellingReview@health.gov.au

Release/Publication of Submissions

9. The majority of submissions will be made available on the Review website and may be referred to in the Review Committee’s report, along with the author’s name and relevant state, unless confidentiality has been negotiated with the Secretariat.
10. Submissions received via post will be available in PDF on the Review website.
11. If you have concerns in having your name published on the internet or if you wish to make a confidential submission, please contact the Secretariat.

Privacy

12. The personal information collected will be used for the purposes of informing the Food Labelling Law and Policy Review Committee of your views regarding the review of food labelling law and policy.
13. If a submission contains information relating to a third party individual, the author of the submission is taken to have obtained the expressed and informed consent of the relevant third party.

Discretion of Review Committee to refuse to publish material

14. The Review Committee reserves the right to refuse to publish submissions, or parts of submissions, which contain offensive language, potentially defamatory material or copyright infringing material.

Conditions of submission

15. By making a submission, you will be taken to have read, understood and agreed to all conditions set out in this guidelines document.

COVER SHEET FOR SUBMISSIONS

REVIEW OF FOOD LABELLING LAW AND POLICY

This completed form must be included with your submission. If completing by hand, please ensure your writing is clear and legible.

DETAILS FOR PUBLICATION	
Individual name/group name/organisation name for publication on the website	

CONTACT DETAILS	
We need to collect your contact details should further information or clarification be required on your submission. Contents of your submission may be included in subsequent publications. Please provide at least one contact address. If you are making a submission for a group or organisation, please provide contact information for one member of your group or organisation.	
Title	
First Name	
Surname/Family Name	
Postal Address	
Email Address	
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INTERNET PUBLICATION	
Please tick this box if you wish for your submission to remain confidential and **do not consent** to having your submission published on the internet.	
If you wish for only parts of your submission to remain **confidential** and not be published on the website, please outline the confidential sections clearly below (with page numbers where possible). If you wish for only parts of your submission to be treated as confidential, it would be appreciated if you could provide the confidential parts of your submission as a separate document.	

ANONYMITY	
Please tick this box if you want your submission to be treated as anonymous and you **do not consent** to having your name, or the name of your organisation, published on the internet with your submission.	

THIRD PARTY PERSONAL INFORMATION	
Please tick this box if your submission contains **personal information of third party individuals.**	

EVIDENCE OF CONSENT	
You should not include personal information about a third party unless you are able to provide evidence of written consent. Please tick this box if you have **attached evidence of written consent**.	