

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 Review 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 Review 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 Review 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 Review 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 Review 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 Review Panel has remained committed to examining all of the issues raised in the submissions as part of its broader public consultation strategy.

2. Submissions Received

The Review 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 origin of the submissions received by the Review Panel is summarised in Table 2. The vast majority of submissions from individual consumers was 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					TOTAL
	Australia	NZ	Trans-Tasman	United Kingdom	United States of America	
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

3. 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 Taskforce¹, 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 stakeholders 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 labelling and to assist enforcement agencies. Respondents from across the

¹ National Preventative Health Taskforce, 2009, 'Australia: The Healthiest Country by 2020'

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 interpretive 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 interpretive 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 interpretive 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 Review 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', if not well defined and understood, had the potential to mislead consumers. 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.

4. 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 Review 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 Review 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 interpretive 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 Review Panel to be mindful of the cumulative impact of food labelling regulation on the food industry and to consider the 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 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 interpretive 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.

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 and 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 interpretive 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 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 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 level. 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 interpretive system such as the multiple traffic light scheme. Many agencies sought greater consistency in the enforcement of food labelling regulations by jurisdictions. Stakeholders also asked that the Review 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 interpretive 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 was 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 interpretive front-of-pack nutrition labelling scheme.

5. Outcomes of the Initial Consultation Period

The key themes of the submissions received during the initial consultation formed the basis of the Review 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 Review Panel's second round of consultation, which concluded on 14 May 2010.