

Food Labelling Review Secretariat
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AANA Submission: Food Labelling Law and Policy Review – Initial Consultation

The Australian Association of National Advertisers (AANA) welcomes the opportunity to provide comment to the above review.

AANA, as the peak industry representative body for over 80 years, is proud of its achievements in proactively responding to Australian and international community and government concerns by adopting and implementing better practice and self-regulatory measures to meet community expectations in relation to a range of issues.

AANA provides the following initial comments in our capacity representing the interests of advertisers. We understand that more comprehensive consultations will follow and look forward to providing detailed contributions to the review in the coming months.

Specific comment on the ‘Matters for Review’ articulated in the Terms of Reference for the review panel.

1 Examine the policy drivers impacting on demands for food labeling.

AANA acknowledges that this review is an outcome of earlier reviews into food regulation. Industry and consumer concerns with the current regulatory system are significant drivers. AANA recommends that this review should consider information gathered in other recent relevant reviews including the Food Regulation Standing Committee on Policy Guidelines on Front of Pack Labeling (2009) and *Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades* (2008).

Other drivers are numerous. Some are referred to in the Terms of Reference and AANA notes that consumer and public health stakeholders have already influenced the development of the ‘lens’ through which this review will be undertaken. Namely, we note that on 23 October 2009, the Australia and New Zealand Food Regulation Ministerial Council endorsed a *Front of Pack Labelling Policy Statement* that is heavily weighted to the current preventative health agenda. AANA questions the focus of this policy at the expense of other issues.

Although touched on in the Terms of Reference, AANA considers that the review must be undertaken in a framework that considers the impact of all relevant legislation and self-regulatory initiatives, not just food labeling in the context of the Australia New Zealand Food Standards Code. In particular, we note the recent (2009) Australian Competition and Consumer Commission (ACCC) *Food Labelling Guide*. Consideration of food labeling in the context of all relevant requirements and policies will form the best basis in which to consider appropriate level of action by the relevant authority or organization.

AANA draws to your attention that there are also numerous industry self-regulatory initiatives addressing food marketing, including labeling. The role (and effectiveness) of self-regulation in responding to consumer and policy interests is an integral 'regulatory' option in the way food is 'regulated' in both domestic and international markets.

Due consideration must also be given to current international developments in relation to food labeling, including those under the auspices of Codex and the EU. This is necessary given the international global economy in which food is marketed. We draw your attention to the recent work by Codex on food labeling and nutrition and health claims in which advertising is a fundamental issue under consideration.

2 Consider what should be the role for government in the regulation of food labeling. What principles should guide decisions about government regulatory intervention?

Regulatory intervention should only be considered where maintenance of label information would enable such information to be up to date, reliable, and acceptable internationally and complete. In short, the government should maintain a responsive regulatory framework. The current regulatory framework does not appear to be able to deliver on these objectives. It is very slow to adapt to changing market environments, emerging consumer and producer needs, and new technologies. AANA acknowledges that government is aware of these concerns and action to address them has commenced, however, they are not yet addressed.

AANA considers that performance, and not prescription, as articulated in the 1996 Industry Commission (now Productivity Commission) report *Packaging and Labelling* recommendation (12) continues to provide the basis for any labeling requirements:

Legislatures and regulatory agencies involved in setting packaging and labelling standards should consider drafting regulations in terms of specific objectives or outcomes which producers are required to satisfy, instead of prescriptive standards.

Any proposed labeling requirements must be based on strong scientific evidence. AANA notes that there are various proposals for front of pack food labeling currently being considered internationally and that there is no consensus on what is the 'best' evidence-based model to implement. The food and beverages industry should not have a regulatory burden imposed where there is not clear evidence to the benefit to the community of the regulation.

Given that numerous legislative and self-regulatory provisions 'regulate' claims made for food, including on labels and packaging, it is suggested that government should take responsibility for ensuring a comprehensive, and comprehensible, information source for consumers and industry be made available and maintained. AANA notes that label space for products, including for food, is used to convey information on a range of matters and not only those relating to those required by a specific regulation. Labelling requirements should be developed in a context that includes consideration of all other information that is required or possible to include by the marketer.

Greater clarity is required regarding the issues considered relevant to food regulation as opposed to delivering health policy outcomes. This issue was also recently recognized by the government which accepted in principle in Productivity Commission recommendation that:

The Government agrees that further clarity between decisions on matters of public health policy and decisions of regulation would assist the operation of the ANZFRMC. An administrative process of information sharing has been established by the ANZFRMC.¹

¹ Australian Government Response to the Productivity Commission. @Annual Review of Regulatory Burdens on Business: Manufacturing and Distributive Trades. March 2009.

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

AANA considers that a key reform in regulatory and policy development is for all such developments to be considered in a framework that embeds identification and consideration of a range of options to deliver policy outcomes. AANA does not believe that due consideration to a range of alternative options in policy and regulatory development is currently practiced to ensure that policy implementation achieves both cost effectiveness and successful objectives.

4 Consider principles and approaches to achieve compliance with labeling requirements, and appropriate and consistent enforcement.

A responsive regulatory framework would assist in addressing compliance issues. Greater clarity on the regulatory frameworks applying to labels would also assist.

The effectiveness of regulation is undermined when enforcement is inherently difficult or under-resourced. AANA reiterates the longstanding concerns publicly raised by industry and the public about the enforcement of food law and notes that action is underway to attempt to address this issue.

5 Evaluate current policies, standards and laws relevant to food labeling and existing work on health claims and front of pack labeling against terms of reference 1-4 above.

AANA notes that the February **1996** Industry Commission (now Productivity Commission) review *Packaging and Labelling* made a recommendation regarding the need for regulation of health claims for food. Not only has the development of a relevant standard under the Food Standards Code been deferred again (now 2011 – possibly taking 15 years!) the ongoing resource constraints on FSANZ have delayed progress on other matters that impact on labeling. One only need refer to items on the FSANZ *Food Standards Development Work Plan* so see how long matters (also with related health claim issues) wait to be addressed – many, many years.

The prohibition on health claims and lack of progress in implementing food related policy has, and continues, to hinder food advertisers in the way they can promote healthier food choices and partner with government to deliver better health policy outcomes.

6 Make recommendations to improve food labeling law and policy.

AANA hopes that the responses provided above inform consideration of improvements to the development of food labeling law and policy.

Yours sincerely



Scott McCellan
Chief Executive Officer

20 November 2009