CHC Position on Food Regulation, Labelling and Advertising

This Position statement puts forward the aims of the Complementary Healthcare Council (CHC) with respect to food regulation - labelling and advertising. The paper aims to outline the potential effects of the recommendations from the independent Blewitt report "Labelling Logic", should they be accepted by Government, and consequently further revisions of Proposal P293-Nutrition Health and Related Claims.

The CHC believes the main priority of the food regulatory system must be to meet broader public health objectives. Food regulation, particularly labelling law and policies, should protect and promote public health by ensuring safe and high quality foods are available and promoted to the Australian population in such a way as to assist them to make informed and healthy choices.

The CHC supports a change of food labelling regulation and advocates for consumer protection from misleading or false claims; particularly in relation to health claims. The CHC believes that enforcement of any labelling requirements needs to be improved. Current enforcement of food standards is inconsistent and not adequately applied which in turn creates an unlevel playing field for the complementary medicine industry due to the similar nature of the health claims being used. The CHC is of the opinion that if health claims on food labels are to be allowed, enforcement needs be applied consistently and the claims should be substantiated by appropriate scientific based evidence.

The CHC considers that labelling regulation should be suitable for individual consumers' requirements, without losing appropriate marketing competitiveness. Furthermore, the CHC strongly recommends that any health claims related to foods should be supported by appropriate evidence. The CHC believes that the labelling standard should be expanded as part of the Food Standards Code, and that sufficient resources are allocated to ensure that it is effectively monitored and enforced.

Background

Food labelling has become a mired in illegal food claims, that are not enforced or generally ignored by some sectors of industry. The interface between foods and therapeutic products has become wider and further hindered with inconsistent interpretation or complete inaction. Enforcement of Food Standards requirements for health claims on foods is non-existent or rarely enforced. A key issue is how to secure a continuum in relation to health claims across food products and therapeutic claims across complementary medicines. As noted in the South Australian Government submission to the Review of Food Labelling Law and Policy, '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'. The introduction of health claims in the food regulatory regime will make more urgent the resolution of these interface problems.

Whilst there are a number of guidance documents covering food claims, they are outdated (Code of Practice on Nutrition Claims in Food Labels and in Advertisements 1995) or are not codified (Food labelling guide, ACCC 2009) and importantly are not mandatory.

CHC Position

There are principles that should form a foundation for sound food labelling regulatory policy. These principles are:

1. The primary reason for mandating information on food packages is to allow consumers to make an informed choice. Clear interfaces should be established between food labelling requirements and other requirements of therapeutic goods and dietary supplements.

2. Food labelling requirements should be interpreted and enforced in a consistent manner across Australia and New Zealand.

3. There must be clear and unambiguous guidance and policy for labelling and advertising requirements. Outcomes based policies and law are generally preferable to prescriptive regulations.

4. Breaches of labelling regulatory requirements should be dealt with in a timely and consistent manner with sufficient severity to deter further breaches.

5. All food laws need to be consistent with COAG principles for national standard setting.

A policy and regulatory environment incorporating the principles above, would enable the food industry to utilise labelling to better inform consumers with the information that is appropriate to the product and relevant to the consumer.

There is an important element of education required to assist consumers and other stakeholders appreciate the role of food labelling and to understand and utilise the information provided. This would be best implemented as a shared responsibility between government, public health professions and the food industry.

The CHC believes the following specific changes should be pursued and implemented.

Claims

The CHC is opposed to the use of nutrition and health claims on food labels as we believe that they are little more than marketing messages giving consumers selected information about the health benefits of certain foods. However, if health claims on food labels (which in some cases are very similar to therapeutic claims for medicines) are to be allowed, enforcement needs be applied consistently and the claims should be substantiated by appropriate scientific based evidence. Furthermore, low to general level claims on foods should be regulated on an equivalent and equitable basis to complementary medicines. Complementary medicines, if listed, are only permitted to make low to general level health claims.

A food should not be permitted to carry high-level health claims. However, should food manufacturers be allowed to label their products with high level health claims, they must accept equivalent restrictions, and be prepared to undertake equivalent quality control, stability and regulatory oversight. This would ensure for example, that not only is the ingredient(s) present but in sufficient quantities supported by the evidence to which the claim is based.

Allowing foods to make high level health claims without requiring similar manufacturing standards or evidence substantiation will expand the unlevel playing filed that currently exists between foods and medicines and will be misleading to consumers. In particular, by not requiring to the same level of manufacturing oversight, public health and safety may be put at risk as it can not be assured they contain the ingredients and levels of ingredients stated.

Under the proposed health claims regulation (P293) a limited number of general level and high level health claims that link individual nutrients with specific health benefits would be preapproved by FSANZ. The evidence for the nutrient-benefit relationship would have already been assessed and any product that contains sufficient quantities of a particular nutrient (a minimum level would be set out in the Food Standards Code) would be eligible to carry that claim. Under current arrangements enforcement of this standard would be the responsibility of state and territory food or health authorities in the state where the manufacturer or importer is located. There is no requirement to monitor compliance and authorities may only investigate compliance if a product is the subject of a complaint.

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

It is our position that foods making general level and high level health claims should require premarket substantiation and approval. However, if exemptions are made in the interests of national health priorities, these exemptions should apply equally to both complementary medicines and foods.

Regulatory Approach

It is the CHC's position that a consistent, equitable regulatory approach for nutrition, health and related claims be adopted for food, complementary medicines and dietary supplements.

Aligning health claims and complementary medicine regulation could prevent manufacturers cherry picking the least onerous regulatory scheme and minimise the risk that products fall in the regulatory grey area between food and therapeutic regulations.

Advertising

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

The CHC strongly supports that food advertising be enforced in a similar manner to the Australian Food and Grocery Councils voluntary Code of Practice - Food Labelling and Promotion, and supports the publication of breaches and sanctions applied as deterrence to other manufacturers who wish to advertise similarly.

Many of the claims made in advertising have been part of voluntary codes that aren't mandatory standards. By defining food descriptors and regulating these claims in the Food Standards Code this should improve the enforcement of these claims in advertisements. However, food regulatory bodies will need the necessary powers and enforcement tools to regulate and enforce claims made in food advertisements, so that they will be more likely to deter industry non-compliance.

Country of Origin

There has been increasing pressure on governments to reform food labelling regulations because of concerns that they do not properly assist consumers in making informed decisions. Regulatory action with regard to Country-of- origin labelling, a consumer value issue recognised by the Food Labelling Panels Issues Hierarchy, should be initiated be industry through consumer protection legislation. That is, a specific consumer information standard for food should be provided for within consumer protection legislation rather than in the Code.

The CHC supports the mandatory Country-of-Origin labelling on all food products. However, the CHC's position is to seek more clarification around the phrase 'Made of Australian and Imported Ingredients' (defined as at least 50% by weight (excluding water) of ingredients and components of Australian origin). This clarification could be:

Australian Ingredients 65%

Imported Ingredients 35%

The CHC believes that all foods coming into Australia from New Zealand should be labelled with a Country of Origin. In New Zealand there is no mandatory requirement for Country- of-Origin labelling, although suppliers may opt voluntarily to supply the information on labels. The consequence of this difference in approach is that the Trans Tasman Mutual Recognition Agreement (TTMRA) allows food sold in New Zealand with no Country- of- Origin labelling to be legally imported into Australia and sold. This constitutes a way of avoiding the Australian Country-of-Origin labelling requirements.

The CHC believes in the free flow of products between manufacturing sources, like for like, properly regulated and conforming to relevant standards of the Country-of-Origin and the Country of Destination.

The Therapeutic Goods Administration (TGA) regulates all therapeutic goods commercially produced, exported and imported from and to Australia, and monitors and evaluates these products using a risk based system. Imported goods must meet regulatory standards when entering Australia so compliance is the key not

necessarily geography. Similarly, the 10 jurisdictions covered by the Foods Standards Code, should also use a risk based system to evaluate and monitor food products, whether locally produced or imported.

Enforcement

The CHC considers that having a single enforcement agency in each country, where industry can seek advice on interpretation, would resolve many concerns relating to consistency. This agency could be either within or 'beside' FSANZ, supported by legislative powers and adequate resources. In Australia, this would be a Commonwealth agency with a sister equivalent agency in New Zealand. This agency would monitor both label and advertising compliance on a risk based framework.

Currently in Australia, shared responsibilities between state and territory and Commonwealth Governments for regulating and enforcing food standards may result in duplication of regulation or inconsistencies in enforcement. This places undue burden on the food industry as food businesses that operate in a number of states and territories may also be required to meet different state and territory regulations. The reality is that different enforcement priorities and different interpretation of food standards means that enforcement action is not consistent across states and territories.

If a product breaches food labelling requirements it is likely to affect consumers across Australia not just those who live in the jurisdiction where that manufacturer or distributor is based (currently there are 10 jurisdictions). A national approach could address this 'home state rule' which places greater enforcement burden on authorities in states like NSW and Victoria, where the majority of food manufacturers are located.

The CHC's position is that enforcement action must be timely, effective, consistent and transparent. Penalties must be proportional both to the severity of an offence and to the size of the offending manufacturer/distributor and which are sufficiently onerous to discourage breaches.