



Submission from the Dietitians Association of Australia on the Food Labelling Law and Policy Review

14 May 2010

About DAA

The Dietitians Association of Australia (DAA) is the national association of the dietetic profession with over 4000 members, and branches in each state and territory. DAA is a leader in nutrition and advocates for better food, better health, and better living for all. DAA has a role to advocate for broad public health responses to the prevention and management of nutrition related health issues. DAA provides accurate and practical information to Australians and supports members in their professional practice.

Executive Summary

The DAA supports improving public nutritional health as a priority. The Food Labelling Law and Policy Review is an excellent opportunity to take a fresh look at the role of food labels, whether they currently meet the primary objective of protecting public health and safety and how they might best meet this and other key objectives.

The key issues for the DAA in this Food Labelling Review are:

- Promoting short and long term public health should be included within the principle of protecting public health and safety and a key consideration in food labelling regulations.
- Ensuring labels provide sufficient information to:
 - enable consumers to distinguish between healthy and less healthy choices.
 - allow consumers with prevalent special dietary needs to identify appropriate foods and those to limit. Prevalent conditions that warrant the provision of adequate label information include obesity, cardiovascular disease, diabetes, kidney disease, malnutrition and common allergies and intolerances.
- Ensuring labelling requirements are governed by a solid evidence base and are socially responsible.
- Ensuring that labels that are used for the purpose of health promotion are effective in this objective. More specifically, any implied or overt references to health benefits on labels should not mislead consumers as to the overall nutritional quality of the food.
- Ensuring food labelling regulation is actively enforced.

FOOD LABELLING OVERVIEW

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

The food regulatory system should be used to meet broader public health objectives such as reducing the burden of chronic disease and to promote health and wellbeing. However, it cannot be relied upon solely to do this. A comprehensive, multi-level, strategic approach is required for successful public health programs. It is important to have consistency between food standards and national public health messages.

Primarily, the food regulatory system should ensure the provision of a safe food supply from paddock to plate. Concurrently, the food regulatory system needs to provide adequate information to enable consumers to make informed choices.

Diet-related disease provides the largest burden of ill health with greater impact than tobacco smoking, physical inactivity and alcohol (Preventative Health Taskforce, *Australia: the healthiest country by 2020*). To be effective, tackling public health issues requires a range of initiatives, one of which can be regulation. Given the enormous social and economic costs of poor diets, it is appropriate to consider various forms of food regulation, including implementing and enforcing food labelling and marketing laws, as one part of a broad based strategy to address this growing public health issue.

Care needs to be taken to ensure that public health initiatives within the food regulatory system are effective in achieving their purpose and are not simply a marketing tool to be used at the discretion of industry (for example, using nutrient and health claims to promote a product which would generally be considered unhealthy). It is also important to ensure there are adequate enforcement tools to better improve compliance.

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)?

Labelling on food serves a number of purposes: the basic identification of the food, providing consumers with information to allow them to make informed choices, providing information relevant to acute health safety such as allergen declaration, use by dates, and marketing. Food packages have limited space and consideration needs to be given to avoiding information overload for consumers and unnecessary burden for food manufacturers and enforcement agencies.

Certain information needs to be available at the point of purchase and cannot be provided through other means such as education or through websites. This includes information relating to food identification and for the prevention of acute health safety issues. The current FSANZ code excludes foodservice (foods eaten away from home) items that are prepared onsite and sold directly to the customer from many labelling requirements including mandatory NIPs. With 3.7 billion meals served via commercial foodservice channels, BIS Shrapnel. Australian Foodservice Survey 2007, healthy alternatives can make a real difference to public health by helping Australians choose

healthier meals outside of the home. DAA recommends that mandatory NIPs should be extended to include food service items such as food from large quick service restaurant chains (i.e. those with more than 20 outlets) and that this must be available to consumers upon request and may be presented by reasonable means (e.g. in a brochure or posted at point of purchase). It should include energy, initially, and other nutrients in time.

Prevalent chronic diseases such as diabetes, hypertension, coronary heart disease and chronic kidney disease, can involve acute health issues requiring people to know the specific nutrient content (e.g. potassium, sodium, fat and carbohydrate) of products. These should also be identified on products rather than via other means, and the nutrition information panel (NIP) is a useful standardised way of displaying this type of information.

DAA is aware that technology has been developed to provide consumers with more information about food products via barcoding and it is likely that this could be extended to iphone-like applications in the near future. It is important that vulnerable groups, such as the elderly, low SES, low literacy and culturally and linguistically diverse (CALD) groups are not disadvantaged by technological barriers to accessing the information they need to make informed food purchase decisions.

Other information such as public health messages are currently provided through other means and arguably might not be required on food packages. DAA is aware of the tensions between packaging space for labels and the number of requirements under current regulation. However, food labels could serve as one method of educating consumers and reducing the burden of diet-related disease. Furthermore, industry has indicated a growing interest over the past 15 years in using nutrition and health related statements as a tool for marketing on their product labels. This has led to the need for clear regulations on which nutrition and health labels should be permitted and under what conditions.

Q3. How can accurate and consistent labelling be ensured?

Clear legislation and interpretation

DAA contends that by having clear legislation around labelling, written in the FSANZ Code, enables breaches to be enforced. Current food legislation is unable to adequately deal with marketing on food labels with examples of health claims on food packaging being made, which are currently prohibited.

DAA calls for a single body responsible for interpreting food regulation and compliance, with a 'watchdog' role addressing food labelling issues. Food labelling law interpretation for industry could help to provide better compliance and consistency.

Accuracy of NIPS

DAA recommends that for packaged foods, the average content of the nutrients that are declared on the NIP must fall within a certain range i.e. must meet a minimum or a maximum level as appropriate for that particular nutrient. For example, in the US the declared nutrient values must be at least 80 percent and may not exceed by more than 20 percent the labelled values on the NIP (as per the USFDA). (ref:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/default.htm>

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

The protection of public health and safety of the population should be the priority principle guiding intervention. However other key principles should include:

- Ensuring evidence-based, socially responsible nutrition labelling.
- Ensuring nationally consistent enforcement, monitoring and surveillance of food labelling
- Preventing misleading labels to help consumers make informed choices
- Supporting Australian consumers to make informed healthier choices (i.e. in line with Australian dietary guidelines that take chronic disease into consideration).
- Ensuring Australian consumers (including disadvantaged and vulnerable groups) can access consistent, easy to understand, helpful and factually correct nutrition information.
- Based on a cost benefit analysis which includes social as well as financial costs, and takes into account the cost of 'inaction'.
- Improving population health more broadly (including nutritional health status not just reducing obesity and other chronic diseases).

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

DAA contends the government requires a spectrum of tools for intervention. The principle of minimum effective regulation should apply, basing the degree of regulation on the level of risk and public cost.

DAA contends the criteria should be:

- Level of risk:
Mandatory intervention should be required for high-risk food safety issues, for example, food safety recalls, and allergen labelling; and high cost social issues such as public health and chronic disease, for example, a front of pack labelling (FOPL) scheme and health-promoting labels.
- Non-legislative or legislative:
Voluntary codes have had varying success. The failure of the Code of Practice on Nutrient Claims makes a strong case that nutrition claims need to be regulated. However some voluntary symbols on labels for sub-populations have been successful at encouraging industry to reformulate food products with healthier nutrient profiles, for example, the glycaemic index (GI) symbol and the Heart Foundation Tick.

Co-regulatory approaches may be successful for health-promotion labelling if they are actively monitored and have sufficient tools and resources for enforcement.

Ultimately, regulation of public health labelling needs to be underpinned by the principle of being effective in achieving their objective. If food labels are to be considered as a means to meet broader public health objectives then careful consideration needs to be given to what types of health promoting statements and symbols or signposting should be permitted and under what

circumstances. A co-ordinated approach should be taken to prevent a range of health promoting statements and symbols being used simultaneously that have varying criteria and aims which can result in a confusion of the health messages being portrayed.

Outside of labelling, other non-regulatory approaches to public health issues should be considered. Where non-regulatory options have been raised in past proposals, FSANZ have indicated that they have been unable to consider non-regulatory approaches, forcing the progression to a regulatory model. DAA recommends that an appropriate agency, perhaps FSANZ, should widen their scope to consider non-regulatory approaches in the future.

KEY ROLES OF FOOD LABELLING

Q6. Is this a satisfactory spectrum for labelling requirements?

DAA recommends that the FSANZ Code in relation to labelling should capture:

- Foodservice foods.
Mandatory labelling should extend to foods sold at restaurants and take-away outlets that have universal menus throughout Australia. NIPs should be extended to include food service items such as food from large quick service restaurant chains (i.e. those with more than 20 outlets) and that this must be available to consumers upon request and may be presented by reasonable means (e.g. in a brochure or posted at point of purchase). It should include energy, initially, and other nutrients in time.
- A complete ingredients list
- A Nutrition Information Panel including the current mandatory nutrients and in addition potassium, fibre and trans fat.
- A Front of pack labelling scheme.

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

- Please refer to Q29

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

Food labels can be used to support the promotion of better health. DAA contends that labelling may support the following health promotion initiatives:

- Healthy eating messages
National nutrition campaigns are able to employ the use of food labels in an effort to provide consumers with increased awareness and knowledge, for example, in the case of folate fortification, via the labels of foods enriched with folic acid.

The nutrition information panel (NIP) can be used by consumers to identify specific nutrients of interest to them.

For example,

- people interested in consuming a low-sodium diet will be able to identify a suitable product by reading the sodium level contained in a food product
- people with coeliac disease can identify suitable gluten free products via the claims made and ingredients list
- People with chronic kidney disease would be able to identify suitable products by reading the potassium levels contained in a food product.

(Direct health messages which support a greater health promotion objective should be evidence based, simple and easy to understand regardless of educational background and culture. Focus group testing of health messages on labels must be undertaken to help ensure the correct consumer understanding of the messages on food labels).

- Weight and addressing obesity issue
Promotion of standard serve sizes, consistent with the national dietary guidelines, would be a useful health message to promote via food labels.

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

DAA strongly supports the right of Australian consumers to have access to accurate and truthful information to enable them to confidently and safely choose the widest range of foods possible.

Allergies

The ingredients list is one tool on food packages that can assist consumers in:

1. understanding the food safety risks associated with eating the food (for example, the presence of food allergens), and
2. providing general, specific and complete information to the consumer on the ingredients in the food product (for example, food additives and a guide to the proportion of each ingredient).

DAA supports the declaration of allergens that can be detected and strongly recommends scientific evidence is used to justify any exemptions from labelling for allergens considered unlikely to cause a reaction.

Labelling of allergens is a mandatory requirement for packaged foods, however, DAA supports greater regulation or disclosure requirements for allergens for non-packaged foods. DAA also supports mandatory allergen labelling of food for catering purposes.

DAA is aware that for some consumers with food allergies the use of “may contain” statements for allergens can restrict food choices for these consumers and can also be confusing. However, DAA is also aware that the food industry has developed the Voluntary Incidental Trace Allergen Labelling (VITAL) tool to help manufacturers to minimise the use of these statements. The voluntary use of the VITAL tool (or a similar tool) by food manufacturers appears to be assisting food allergic consumers to make informed food choices and aiding their understanding of food safety risks for packaged foods. Industry needs clear and practical direction to manufacture foods appropriately labelled to meet needs of consumers with allergies. DAA supports the evaluation of voluntary allergen labelling and consequent consideration of mandatory options as appropriate to determine the balance between regulatory and non-regulatory approaches.

DAA contends that the current standard requirements for processing aids, i.e. that these should not have to be declared in the ingredients list if they are not present in the final product, are adequate.

DAA's submission to FSANZ in June 2008, highlighted a number of allergen labelling issues. It called for sources of derivatives to be declared on labels, for example, lecithin (soy) and thickener (maize); clarifying the term fish, and stating common names of nuts rather than the use of 'tree nut'. We also called for research into molluscs and lupin as significant allergens in Australia and New Zealand.

Additives

Disclosure of food additives could be improved if only one consistent method of declaration of these ingredients was permitted on food labels. The use of generic rather than scientific names on labels may be more readily understood by consumers, however, DAA suggests that this needs to be tested in consumer research.

Palm oil

DAA recognises that palm oil is not always listed on food labels as there is no legal requirement to do so. Availability of vegetable oils can be variable and the current labelling requirement provides the food industry with some flexibility with oil ingredients for this reason. Whilst DAA notes there is no legal requirement to list exact ingredients, DAA contends that this does not enable consumers to make informed choices. Coconut fats and oils are also higher in saturated fats than other vegetable oils. Mandatory labelling of saturated and trans fats in the NIP may ensure consumers can make an informed choice.

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

Food labelling is an important avenue to assist in information provision for both general health promotion and the management of conditions and to enable consumers to make desired food choices. Consumers are increasingly taking an active interest in health and other issues such as the environment which has led to increasing pressure for information to be available to enable informed choice. Health claims is a complex area and a diversity of opinions have been expressed regarding the most appropriate way to frame food standards in order to protect consumers, avoid consumer confusion in interpreting labels and to assist consumers in choosing foods for good health. It is important to have consistency between food standards and other public health messages.

DAA has made multiple submissions previously to FSANZ relating to P293 Nutrition, Health and Related Claims (Mar 2006, May 2007, Feb 2008, May 2009), and to the Food Regulation Standing Committee (FRSC) consultation paper for a Front of Pack Labelling Policy Guideline (Feb 2009). In submissions, DAA has noted that:

- The current system for nutrition, health and related claims is not working, that there may be some advantage to consumers in learning the health benefits of specific foods but that there remains a risk that these claims could be used inappropriately.

- The permission to use health claims as a health promotion tool should be backed by a strong evidence base. Health claims should only be permitted on foods that would be recommended in a diet to help prevent or improve the health condition of the claim. There should also be a requirement for routine reviews of the evidence behind permitted health claims (for example every 5 years) to ensure the health claim is still relevant and supported by the balance of evidence.

Health claims link an individual nutrient to a general health condition or disease. One issue with this approach is that disease states and general health are often the result of a variety of factors. Dietary factors that are associated with health more often than not require the consumption of an entire dietary pattern to be successful. Furthermore, while studies may associate individual nutrients with health benefits, it may be the matrix in which these nutrients naturally occur (such as in whole fruit and vegetables) that is important for their health-giving effects. Evidence of this can be seen where an association between a food and health state is not reproducible when the nutrient is isolated and given in supplement form (for example when supplemented beta-carotene was given to reduce lung cancer risk, Goodman et al, 2004).

- Appropriate and consistent regulation, enforcement and adequate monitoring of food labelling regulation is essential if health claims are to be permitted on food labels, so there can be confidence in food labels and health messages. The current Food Act is not designed to be able to adequately enforce health claims unless the regulations are black and white. Relying on industry to evaluate the evidence or decide upon the wording used, for example, could introduce sufficient doubt and reduce the chance of a successful prosecution thereby deterring enforcement agencies from taking action.
- If health claims are to be permitted, DAA supports the FSANZ model for a pre-approved list of objectively supported health claims for use by manufacturers on food labels.
- Prescribed wording must also be regulated to enable enforcement under the current system. Alternatively an improved enforcement system that relies on the balance of probabilities with appropriate enforcement tools would need to be introduced. DAA suggests that FSANZ also consider high quality methods of conducting systematic reviews, such as Quality of Reporting of Meta-analyses (QUOROM) for randomised controlled trials or Meta-analysis Of Observational Studies in Epidemiology (MOOSE) for epidemiological studies.

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

Currently all health claims are prohibited on foods, with the exception of those relating to folic acid and pregnancy. An additional five health claims have been approved by FSANZ and included in the draft Standard 1.2.7, but this legislation awaits approval by the Australia NZ Food Regulation Ministerial Council.

Claims are not allowed to be made about “serious” forms of diseases or conditions in the promotion of therapeutic goods, unless a specific exemption has been granted by the Therapeutic Goods

Advertising Code Council upon receipt of an Application for approval to use a restricted representation in advertising.

Currently therefore, there is not a level playing field for the promotion of the health benefits of foods and therapeutic goods. Furthermore, a number of products that are sometimes difficult to classify as either a food or therapeutic good by regulatory agents, are making claims that are prohibited under both schemes, yet are avoiding appropriate regulation by falling through the gaps between the 7 state and territory food agencies, and the TGA. Weight loss products are an example where this problem is prevalent.

Given a significant proportion of these products are sold in all of the major supermarket chains along with foods and therapeutic goods, it is highly likely that the average consumer does not understand the difference, or the significance, of whether a product is either a food or therapeutic good. They would most likely be focusing on the purported health benefits. It would therefore make sense from the consumers' perspective to align the regulations relating to health claims on foods with those for complementary medicines. This would also make the task of regulating and policing health claims on foods and therapeutic goods simpler for government agencies. To achieve this, the establishment of one government agency that regulates health and related claims on both foods and therapeutic goods may be warranted, as occurs in the United States of America.

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

No, DAA contends that foods are complex mixtures of nutrients unlike cigarettes or other drugs. The addition of health warnings to food labels presents a complicated system where many issues need to be considered. The number of messages on food labelling is confusing for many consumers and adding more messages may lead to further confusion rather than clarity.

The issue of products highlighting the benefit of one nutrient while the product is high in other 'negative' nutrients is of concern. This is seen often in products that have been reformulated to be lower in fat, but have increased amounts of refined carbohydrate or sodium compared with the original product.

Consideration needs to be given to those foods that are naturally high in a negative nutrient but make other positive contributions to the diet, for example hard cheese is naturally high in fat and sodium but we know that it is a rich source of calcium.

DAA supports a front of pack labelling scheme that is mandatory, evidence based, understood by consumers (including low literacy and CALD groups), effective at influencing health promoting behaviour, and is evaluated and enforced appropriately.

The introduction of a mandatory, effective front of pack labelling scheme including both positive and negative nutrients should effectively enable consumers to identify the levels of a range of nutrients at a glance, regardless of whether one nutrient is highlighted in a content claim. An additional overall single evaluation of the product (for example in an evidence-based front of pack labelling system)

taking into account the negative and positive nutrients would enable consumers to know whether the product should be consumed regularly, moderately or infrequently for good health.

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?

The Food Standards Code should primarily address matters that impact public health and safety. A sufficient, quality evidence base should exist in order to warrant information present of food labels.

The current amount information on a food label can lead to confusion for some consumers, while additional information would enable consumers to make a more informed choice, we need to ensure that the most critical information is clearly visible and easy to interpret.

Consumer concern over the contents of food products can be addressed by food manufacturers providing more information about their food products through alternative mediums e.g. website, telephone help enquiry lines.

DAA contends that additional concerns are an important area that that might be better addressed outside of the Food Standards Code such as through consumer protection laws.

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

Assessment of the evidence base that supports the concern. If adequate evidence for the concern exists and this affects a significant percentage of the population then that information should be made available on the label. Industry has begun to include better information relating to allergens on food labels due to consumer concern.

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

No comment

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

No comment

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?

Yes. These terms cause consumer confusion, are ambiguous and without definitions are unable to be enforced. These terms need to be formally and clearly defined.

DAA is unsure if the Food Standards Code is the best place for these regulatory needs to be considered. Regardless of where these regulations sit, they need to be adequately legislated,

monitored and evaluated. These claims should be accompanied by a wide-reaching consumer education campaign and further information in the form of printed material and websites, for example. The goal of such claims is to enable consumers to make informed decisions based on factual information.

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

In order for consumers to have confidence in the claims on labels, in relation to animal welfare or environmental concerns, there need to be clear definitions of these claims. For example a free-range claim should be based on a definition which enables enforcement agencies to determine whether the claim is legitimate or not.

Criteria and guidelines should be determined in consultation with relevant bodies (for example, animal welfare agencies).

Adherence to a (potentially voluntary) accreditation / certification process could be beneficial (such as similar to the Heart Foundation Tick or GI Symbol Program). This would need to be accompanied by a wide-reaching consumer education campaign.

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?

Disclosure about the use of technological developments such as GM, irradiation and non-technology could be followed with a statement about potential harm or safety information based on the best available evidence.

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?

DAA supports alcohol being regulated as a food and supports mandatory labelling of energy and carbohydrate content on all alcoholic drinks.

Currently, the Food Standards Code has special provisions for a range of products that would not normally be consumed by the general population as food (for example, 2.9 'Special Purpose Foods'). It could be possible to manage alcohol in this manner in order to ensure appropriate regulations are in place to provide adequate information for informed choice and prevent socially irresponsible marketing and claims.

The regulation of alcohol as a food will have both negative and positive benefits for consumers. Alcoholic beverages are not a core food despite contributing energy and some nutrients, such as carbohydrate, to the diet. If regulated as a food it is hoped that consumers would become more aware of the high energy value of this food without a corresponding high nutritive value. In addition, it may alert consumers to food substances that are mixed with ethyl alcohol when making alcoholic beverages for consumption. For example, high-energy mixers and high-saturated fat mixers such as

coconut milk, and possibly even foods containing traces of nuts which may be harmful to some individuals. Many alcoholic drinks also contain carbohydrate which is of particular interest to individuals managing their diabetes.

It is possible the regulation of alcoholic beverages may 'normalise' the appearance of alcohol beverages and therefore making them more acceptable and appealing to a wider audience. There are examples of promotional labelling of some low-carbohydrate beers (for example, Blonde) in an effort to increase the market share (females predominantly) of this product. This is despite the fact that all beers are low in carbohydrate, yet consumers are unable to make an informed decision because the carbohydrate content is not printed on all beer labels – only those making low-carb claims.

FOOD LABELLING PRESENTATION

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

DAA notes that the Food Standards Code previously specified a minimum font size for food labels but that this requirement was removed December 2002 – along with the general implementation of Volume 2 of the FSC.

DAA supports the theory of a minimum font size for all wording on packaging, however, it also recognises some limitations in this approach. A minimum font size for all wording may mean manufacturers have to increase the size of their packaging due to space restrictions on smaller packages. This has implications for the environment as well as to the cost of the food for the consumer.

DAA supports a minimum font size for all mandatory warning and advisory statements as is currently mandated in the Food Standards Code. DAA would like to see this extended to cover important elements of the label such as ingredient lists and NIPs.

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

DAA supports any methods to improve readability and understanding of food labels. In particular DAA supports the use of standardised areas on the food label that would help consumers in their comprehension and readability of the food label. For example, the current nutrition information panel and ingredients list.

DAA is aware of some readability scales which are based on number of syllables and sentence length. Since it is not our area of expertise, it is not known by DAA whether there is a particular tool that could be applied to food labels successfully.

There are ways of studying how a website is read and used by tracking the eyes of individuals as they view sites. This is expensive, but is used in the development of user-friendly websites – perhaps labels could be assessed in this way to see how people look at them and how and where information could be best positioned and presented?

DAA suggests that similar areas such as a “health information panel” could be adopted to provide consumers with other standard label information such as allergens, health messages and other consumer identified issues.

DAA would also support the provision of additional information to consumers through other mechanisms other than the food label (e.g. bar code scanning technology) if this could help to improve the readability of labels.

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

Food labels are attempting to be all things to everyone, yet clearly people in different life-stages with different health issues (or lack thereof) have differing needs. A minimum set of mandatory labelling information common to all life-stages and conditions is likely to be the most practicable solution. Some items of information such as the manufacturer’s details, batch numbers, and use-by/best before dates are essential from a food safety perspective, and legibility, but not necessarily pack-placement, are essential considerations for these vital components.

Certain aspects, including the content of the nutrition information panel and its presentation, are essential from a nutrition perspective, but individual requirements vary throughout the lifecycle. The DAA recommends that the content of the NIP is based on the latest scientific evidence using the revised Dietary Guidelines for Australians (due 2011) as the primary foundation. The range of options for interpretive tools like %DI, Traffic Light Guides, or hybrids (as being considered by the UK FSA) also need to be considered.

Position and minimum font size (if mandated) of core items such as the NIP should be based on the needs of the lowest common denominator (likely to be elderly Australians with one or more chronic diseases/conditions), although practical considerations such as label surface area obviously needs to be taken into consideration. A series of focus groups with small groups of representatives from each of the major life-stages, and with a variety of health conditions, could be used to inform decision making. A similar process was utilised in the development of the draft nutrition, health and related claim legislation.

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

DAA recommends the following to best inform consumers to understand food labels:

- Standard terms and claims. Dietitians frequently spend time educating clients about how to interpret food labels and it is clear that there exists a great deal of misunderstanding about what certain terms and claims mean.
- Standard formats and wording should be used where possible for the ease of interpreting information.

- Standard serving sizes would also aid in food comparison and more accurate interpretation of nutrition information on labels.
- Consistency of messages and labels. Ensuring that consumers understand food labels involves not only providing education on food labels, but also ensuring that information provided on food labels is consistent with educational messages provided elsewhere. This is increasingly important with the growing amount of nutrition and health related information provided on labels and the push by industry to be permitted to make health claims. Inconsistent messages can occur when a positive nutrient or health claim is made on foods which are recommended to be limited. Evidence of this can be seen in Australia with vitamin claims on chocolate cereals. These labels provide a confusing picture of whether consuming that product will benefit consumers' health.
- Education. Research has shown that certain types of education can improve consumers' understanding of labels. Research commissioned by FSANZ on the perceptions and use of %DI (2007) showed that multiple, guided attempts to interpret the information was a key factor in improving accuracy of understanding, more so than simply being told about the concept and left to do it alone. It was concluded that highly visible advertising and demonstrations would improve understanding. It is likely that this would apply to any labelling that requires some level of baseline knowledge or interpretation. Education would ideally include a variety of educational modes such as internet, television advertisements, demonstrations and printed material. Any significant change to food labelling should require dedicated funding for an education strategy to enable this to occur.

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

There is a need for evidenced-based government policy that guides all labelling aspects including pictorial icons. Regulation of labelling beyond the basic necessities should be considered as part of the broader public health agenda. Government, via regulation, should ensure that any nutrition or health-related pictorial icons are clear, unambiguous and are consistent with nutrition and health messages provided elsewhere.

With the growing number of pictorial icons being used in Australia, together with the proposal for a front-of-pack signposting system and the use of health claims for individual nutrients, there needs to be a co-ordinated approach to determine the collection of information that should be permitted on labels. Care should be taken to prevent a range of health promoting statements/ symbols/ signposts being used simultaneously that have varying criteria and aims which confuse the health messages being portrayed. The importance of uniform pictorial icons for nutrition labelling was highlighted in the United Kingdom where a number of different front-of-pack labelling systems were introduced with varying criteria, causing considerable difficulties in comprehension for consumers (Malam et al, 2009).

While there has been significant success with a number of pictorial icons on Australian foods to date (such as the National Heart Foundation Tick), the existence of current schemes should not determine their ongoing use on food labels. The rising interest in health information spells a new era for food

labelling and careful consideration needs to be given to determining the optimum approach to ensuring simple and effective information is provided on labels.

Any mandated pictorial labelling should be accompanied by an education campaign with dedicated funding.

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

In February 2009, DAA joined with a number of other public health organisations under the Australian Chronic Disease Prevention Alliance to provide an agreed public health position on front-of-pack labelling (ACDPA, 2009). The DAA continues to support the position and objectives outlined in this report;

Public Health Organisations agree that the overarching goals of any FOPL scheme are to:

- promote an increase in the number of people eating in accordance with dietary guidelines.
- complement and support other strategies designed to address the increasing prevalence of obesity, poor nutrition and chronic disease.

A FOPL scheme can contribute to these overall goals by:

- empowering consumers to make healthier food and drink choices; and encouraging industry to improve the quality of the food supply by addressing nutrient composition, product marketing and portion size.

In order to achieve these objectives, Public Health Organisations contend that any FOPL scheme must:

- Provide clear, simple, easy-to interpret information.
- Provide labelling information that is consistent across products and uniformly applied throughout Australia.
- Be consistent with broader public health objectives and existing health policies.
- Be able to be understood by most demographic groups, including low literacy, CALD groups.
- Promote healthier food choices as well as highlight those foods that are a poorer choice or should be consumed as an occasional food only.
- Encourage the food industry to produce healthier food products.
- Be strictly enforced to prevent industry non-compliance, to minimise consumer confusion and to ensure that compliant companies and food service organisations are not disadvantaged relative to non-compliant companies.
- DAA further supports a system that indicates the overall nutritional value of the product, rather than just focusing on a limited number of individual nutrients, to allow consumers to easily and appropriately identify healthier choices (for example a traffic light system that only identifies fat, sugar and salt levels would inappropriately portray certain sugar-free confectionery in a better light than fruit.) To ensure that this system is useful to the population at large, the information should be age appropriate, or applicable across all ages, rather than current systems such as Percentage Daily Intake which are based on the average adult male requirement.

Public Health Organisations strongly believe that any FOPL scheme must:

- Be mandatory, not voluntary. This eliminates loopholes, maximises impact, reduces inequities within industry and better ensures consistency.
- Be underpinned by appropriate sanctions to encourage compliance.
- Be actively enforced.
- Be closely monitored and evaluated against its specified goals and objectives. Public Health Organisations recognise that many public health initiatives, including FOPL, are based on inexact science. It is therefore imperative that the FOPL scheme be closely monitored and evaluated and if necessary, adjusted over time in order to best meet the objective of empowering consumers to make healthier food choices and encouraging industry to improve the quality of the food supply. Be part of a broader framework for addressing obesity and chronic disease involving consumer education and policy and legislative initiatives.

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?

There is a case to be made to provide label information in some commercial food settings. National and State policies are now driving a range of initiatives to improve the nation's eating habits. It is therefore appropriate to look at meals consumed outside the home when they contribute a significant portion of food consumed; the average Australian eats out more than four times a week (BIS Shrapnel 2007) and around 27% of Australian expenditure is for food prepared outside the home (ABS 2000).

Frequent consumption of foods prepared outside the home can be a significant health issue given foods purchased from fast food outlets are up to 65% more energy dense than the average diet (Prentice et al, 2003). Portion sizes have also increased over time; those offered by fast-food outlets, for example, are often 2 to 5 times larger than the original size (Young & Nestle, 2003).

Health education alone has been found to be ineffective in shifting food behaviours (Worsley 2002). A sustained and population-wide improvement in health requires creating social and economic environments that are supportive of healthy eating (DHS, 2002). Part of this is ensuring consumers are informed about the food they are eating. Evidence shows that consumers find it extremely difficult to know the energy density and nutrient content of food purchased outside the home (Diliberti et al, 2004).

Although many food outlets provide nutritional information via brochures or the internet, studies elsewhere show that the information is not readily accessible and that less than 0.1% of consumers seek it out (Roberto et al, 2009). Evidence suggests that if kilojoule information is provided on menus consumers will order and eat fewer kilojoules. Furthermore if the menu puts this in the context of the total daily amount of kilojoules a person needs they will reduce their intake over the remainder of the day by approximately 1000 kilojoules (Roberto et al, 2010).

In terms of extending menu labelling from fast food outlets to schools and other institutional premises, it has been recognized that ensuring healthy schools and child care is a priority area when

addressing the obesity epidemic in children (NSW Dept of Health, 2003). Given a significant proportion of meals in a week can be obtained from work premises, it is appropriate to ensure labeling is provided to allow informed choice. Individual restaurants by contrast are likely to contribute a significantly smaller proportion of meals than fast food outlets and institutional premises and the case for the labeling of these menus is less clear.

For health promotion purposes essential information required should include energy (kilojoule) intake put into the context of daily intake at a minimum. While allergy information might be useful to many, many commercial settings are already providing this information voluntarily, it is often more readily apparent from menu descriptors and is available to consumers on request.

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

The role of the Food Standards Code is to provide a regulatory framework around food safety, food additives, labelling and food sourcing not to regulate food advertising.

The Code operates under the Food Act which is a criminal act and requires proof beyond reasonable doubt. Food advertising would be better placed under laws which allow for a civil burden of proof which would be more appropriate when dealing with issues that are not black and white such as advertising claims. Alternatively food advertising could be retained under the Food Standards Code if the relevant laws were altered to enable appropriate enforcement.

Furthermore all food advertising should be subject to the principles outlined within the Food Standards Code to ensure there is consistency with labelling regulations. Improvements need to be made in monitoring and enforcement to prevent claims being made in food advertising that would not be permitted under the Food Standards Code.

Any regulation of food and beverage marketing and advertising must allow the promotion of healthy eating habits and appropriate foods and beverages.

ADMINISTERING AND ENFORCING FOOD LABELLING STANDARDS

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

There are a number of notable differences in the way the labelling of foods and nutraceuticals are regulated in Australia and New Zealand. For example, New Zealand currently only utilizes the Food Standard Code, but not the Code of Practice on Nutrient Claims in the regulation of nutrition, health and related claims. However, NZ has Medsafe for nutraceuticals (and therapeutic goods) - a system that arguably deals more effectively with the grey area between foods and therapeutic goods that exists in Australia. Also New Zealand does not require country of origin labelling on its products.

Overall this mismatch in the regulation of foods and certain nutraceuticals/therapeutic goods creates a number of loopholes that enable foods with potentially false/misleading or otherwise prohibited claims to enter the Australian market place. One solution is to include the provisions for nutrient claims in the Food Standards Code, as proposed in the draft Standard 1.2.7. Incorporation of an

appropriately drafted standard for Country of origin labelling for NZ in another section of the Food Standards Code may provide additional benefits for consumers and regulators in both nations.

However, the most challenging, but arguably most practical solution for all of these, and undoubtedly other discrepancies, would be the creation of a trans-Tasman food and therapeutic goods administration. As well as administering the combined food and therapeutic goods code, the agency could also be responsible for enforcement in both nations. Arguably, such an agency would regulate claims on both foods and therapeutic goods more effectively, benefiting both consumers and regulators.

Widespread communication with stakeholders across the Tasman is critical about which authority's role it is with respect to interpretation and administration of the standards.

One factor that slows the current assessment process is that the same process is used for both simple and complex standards issues.

DAA recommends the following,

- Amending the measures that match the complexity of the assessment process with the complexity of the issue under consideration – providing this does not compromise the protection of public health and safety.
- An early alert could be added to the process for complex reviews to give submitters more time to prepare detailed responses; on the other hand, one round of consultation could be removed for simple issues where public health and safety is not compromised by this change.
- Provide greater clarity for applicants e.g. minimum requirements for an application to ensure it fits with policy, has all the required details and the required format.
- Pre-screening of applications to ensure those that do not fit with policy do not enter the system and overload it.
- Suggest targeted consulting with stakeholders prior to standards drafting – this requires FSANZ to have a good understanding of the interests of various stakeholder groups to optimise the gathering of information at this stage.

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

No comment.

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?

No comment.

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?

No comment

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

No comment.

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

No comment.

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?

DAA would not support an industry self-regulation model of all food labelling requirements because of the likely high risk of perceived or actual conflict of interest.

DAA could support a co-regulation model. We would want to see that there is a balanced representation between industry, government and consumer representatives; that decisions are evidence based; and that there is sufficient basis in law to deal with non-compliance. Appropriate representation from qualified public health professionals included, such as dietitians; leadership to be from government or independent body or FSANZ.

Issues that would need to be addressed:

- clear guidance on reaching consensus/ decision making

Other co-regulatory models, for example, the TGA do not work perfectly. One issue in the complementary medicines system though is that it only covers those companies that belong to the industry body for some aspects. This would not be desirable; a co-regulatory model for food labelling would need to cover all food products.

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

In theory a model whereby food units and agencies are required to work together, would produce more consistency and better decision making. Information sharing would improve the quality of decisions as each agency has expertise that another does not have. There are some areas that are clearly the domain of certain agency however it would benefit from the expertise and input of the other agencies so that all aspects are considered prior to a final decision. Consistency in interpretation and enforcement would be more easily achieved with shared responsibility because

there would be comprehensive input from many perspectives. The involvement of many parties in the process will improve buy in to the final decision and improve satisfaction.

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

In Australia, foods are excluded from the definition of therapeutic goods in the Therapeutic Goods Advertising Code unless they are listed in section 7 of the Act (Section 2 Definitions Clause f (f)). Similarly, all foods are prohibited from making therapeutic claims under the current food standards code (Standard 1.1A.2) and also under the proposed draft Standard 1.2.7. The TGA is able to list a food as a therapeutic good under section 7 if it is presented in such a way that a typical consumer would perceive it as such.

In theory this model should work. In practice, there is an increasing range of products sold in the “health food” sections of typical Australian supermarkets and in “Natural Nutrition/Health Food Stores” that would appear to the average Australian adult to be a food or beverage, but that are making therapeutic claims. Most typically these products are targeting people on weight reduction diets, but there are a number of products that either implicitly or explicitly target the management of diabetes/blood glucose levels. Due to lack of surveillance, and/or jurisdictional issues between State/Territory Food Authorities and the TGA, these products appear to be proliferating.

As discussed under Question 29, NZs Medsafe appears to deal with these nutraceutical products more effectively than the Australia system, but the establishment of a trans-Tasman food and therapeutic goods administration would arguably close this increasingly wide gap between foods and therapeutic goods.

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

No comment.

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

No. As New Zealand applies a risk based approach, an AQIS inspection would mean double handling. A random audit of products from New Zealand could be applied for quality assurance and be reported to New Zealand so that that there both countries can be sure that systems are working well and that improvements can be made where necessary.

All foods, whether manufactured in, or imported to, Australia and New Zealand should be considered under the regulatory system.

References

- Access Economics (2008), *The growing cost of obesity in 2008: three years on*. Available from: <http://www.accesseconomics.com.au/publicationsreports/showreport.php?id=172>
- Australian Bureau of Statistics. *Household Expenditure Survey, Australia: Detailed Expenditure Items*, 1998-99. Canberra: The Australian Government, 2000.
- Australian Chronic Disease Prevention Alliance (2009) *Front of Pack labelling: an Agreed Public Health Position*. <http://www.cancer.org.au/File/ACDPA/FOP-Labeling-Consensus-Statement-March.pdf>
- Bessey A, van Bueren D, Barker B, Davis J (2006). Attachment 2: Technical report: Consumer research on percentage daily intake. Canberra: TNS Social Research for Food Standards Australia New Zealand; 2006. Available at: http://www.foodstandards.gov.au/_srcfiles/P293%20PFAR%20Att%202%20-%20Technical%20Report%20Consumer%20Research.pdf
- BIS Shrapnel. *Australian Foodservice Survey 2007*. BIS Shrapnel Pty Limited.
- Cook T, Rutishauser IHE, Seelig M (2001). *Comparable data on food and nutrient intake and physical measurements from the 1983, 1985 and 1995 national nutrition surveys*. Canberra: Commonwealth Department of Health and Aged Care.
- Department of Human Services (2002), *Environments for Health; promoting health and wellbeing through built social economic and natural environments – Municipal Public Health Planning Framework*. Department of Human Services, Victoria, July 2002. Available at: www.dhs.vic.gov.au/phd/localgov/mphpf/index.htm.
- Diliberti N, Bordi PL, Conklin MT, Roe LS, Rolls BJ (2004) *Increased portion size leads to increased energy intake in a restaurant meal*. *Obes Res*. Mar;12(3):562-8.
- Goodman GE, et al. The Beta-Carotene and Retinol Efficacy Trial: incidence of lung cancer and cardiovascular disease mortality during 6-year follow-up after stopping beta-carotene and retinol supplements. *J Natl Cancer Inst*. 2004;96:1743–50
- Hager MH, Geiger C and Hill LJ et al (2009) Usefulness of nutrition facts labels for persons with chronic kidney disease. *Journal of Renal Nutrition*; 19(3): 204-210.
- Hasler, CM (2008) Health claims in the United States: an aid to the public or a source of confusion? *J Nutr*;138:1216S–20S
- Herald Sun Poll February 22 2010, Should fast food outlets be forced to provide calorie counts www.heraldsun.com.au/news/fast-food-outlets-could-be-forced-to-provide-calorie-counts/story-e6frf7jo-1225832750633

Ledikwe JH, Ello-Martin J, and Rolls BJ (2005). *Portion Sizes and the Obesity Epidemic*. *Journal Nutrition* 2005 1,2.

Malam S, Clegg S, Kirwan S, and McGinival S (2009) *Comprehension and Use of UK Nutrition Signpost Labelling Schemes*, report prepared for Food Standards Agency, May 2009.

NSW Dept of Health (2003) *Prevention of Obesity in Children and Young People: NSW Government Action Plan 2003-2007*. Available at:

<http://kids.nsw.gov.au/uploads/documents/obesityactionplan.pdf>

Prentice, A.M. and Jebb, S.A. (2003), 'Fast foods, energy density and obesity: A possible mechanistic link' *Obesity Reviews* vol.4, pp. 187-94.

Roberto C, Larsen P, Agnew H, Bail J, Brownell, K (2010) Evaluating the impact of menu labelling on food choices and intake. *Am J Public Health* vol 100 (2): 312-318.

Roberto C, Agnew H, Brownell, K (2009) An observational study of consumer's accessing of nutrition information in chain restaurants. *Am J Public Health* vol 99 (5): 820-821.

USFDA (ref:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/FoodLabelingGuide/default.htm>)

Worsley, A., *Nutrition knowledge and food consumption: can nutrition knowledge change food behaviour?* *Asia Pacific J Clin Nutr*, 2002. 11 Suppl: p. S579-S585

Young L and Nestle M (2003) *Expanding portion sizes in the US marketplace: Implications for nutrition counselling* *J Am Diet Assoc.* 2003; 103:231-234