



Australian National Retailers Association

Submission to Food Labelling Law and Policy Review

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EXECUTIVE SUMMARY

Food labelling is a critical issue for Australian consumers and ANRA welcomes the opportunity to comment on this Review of Food Labelling Law and Policy (the Review) in what is an increasingly complex food regulatory system.

ANRA members support food labelling that is informative, concise, clear and consistent. This type of labelling allows consumers to make informed choices about the groceries they purchase.

Unfortunately, the ad hoc nature of the development of food labelling in recent years means food packaging and instore labelling is becoming increasingly complex and difficult to read as more and more information is required in a finite space. The risk is that food packages and instore labelling will become a mass of information which consumers may or may not understand or find useful.

The focus on packaged food also fails to recognise the changing nature of a household's food consumption. Targeting packaged food to contain increased levels of information, at a time when increasing numbers of meals are consumed outside the home risks leaving a large segment of the Australian diet outside the regulatory framework.

ANRA members have identified five key principles for developing a workable framework for food labelling.

1. To the extent possible, food labelling should be nationally consistent in terms of the information required, the manner in which standards are interpreted and regulations are enforced as well as the coverage of regulations.
2. The food labelling regime should recognise that extended labelling (via hotlines or web sites) may be preferable to putting all information about a product on finite packaging space.
3. The test for positioning, font size and colours used to display information should be legibility, rather than prescribed requirements.
4. Information should be useful and easily understood by consumers.
5. There should be greater consistency in date marking systems for food labels.

INTRODUCTION

ANRA members understand the importance of food labelling for consumers and support clear and unambiguous food labelling. ANRA members do, however, note that this needs to be balanced against the costs that constant changes in labelling requirements impose on manufacturers and retailers. Regard must also be had to ensuring that such requirements are practical, useful for consumers and able to be implemented by retailers.

ANRA is encouraged by the establishment of this Review and hopes it will lead to more consistent and informative outcomes for both consumers and businesses.

Food labelling requirements are on the increase, without consideration for the cumulative impact of these additions. Without this Review, there is a risk that packaging will become a muddle of unreadable tables and numbers that does not deliver useful information for consumers and leaves businesses wrapped up in legislative complexity.

ANRA members recognise they have a role in providing consumers with information to assist them with their purchases. This is both in their role as retailers and in their role as manufacturers of private label products. Indeed, many members currently go beyond legislative requirements and have embraced programs such as the Australian Food & Grocery Council's (AFGC) Daily Intake Guide on their own housebrand products.

Australia's leading supermarket chains have also undertaken a number of public health-related initiatives that highlight healthy choices available to consumers within their stores. These initiatives demonstrate the sector's commitment to providing consumers with useful information about the products they buy.

ANRA is particularly concerned that requiring excessive amounts of public health information on products, or requiring overly simplistic health labelling, will actually create more harm than good. For example, the often discussed 'traffic light' system which labels food 'good'(green) or 'bad' (red) in the "warning" continues to be pushed by populist elements. Under this system Cheddar Cheese would be labelled 'red'; a judgement that many consumers and nutritionists would disagree with, except where excess consumption occurs. Labelling a food 'red' or 'green' introduces bias for individual foods rather than promoting 'informed choice' and consideration of a balanced diet approach.

ANRA's submission is focused on outlining five key principles that it believes should underpin food labelling in Australia. These principles address many of the questions raised in the Discussion Paper including issues of relevancy and consistency of information, education of consumers and alternate ways to transfer information to consumers so they can make informed choices.

ANRA appreciates the opportunity to contribute to this Review and hopes that this submission provides the Committee with some insights into this issue from the perspective of Australia's leading food retailers.

PRINCIPLES TO UNDERPIN FOOD LABELLING LEGISLATION

The following section outlines the five key principles ANRA members believe should underpin food labelling legislation.

Principle 1: To the extent possible, food labelling should be nationally consistent in terms of the information required, the manner in which the regulations are enforced and the coverage of regulations.

The inconsistencies in food labelling can be grouped into four general categories – regulators; food labelling codes; enforcement approaches and coverage.

Current inconsistencies

There are currently numerous regulators involved in the development, interpretation and enforcement of food labelling requirements including the ACCC, state-based food authorities and fair trading authorities, local councils and the Therapeutic Goods Administration. These regulators may have different objectives for food labelling such as a business practice approach, a scientific approach, a consumer health & safety approach and/or a consumer understanding approach. These objectives are sometimes conflicting, which can result in situations where one regulator is comfortable with a labelling approach and another is not.

There are also numerous other labelling requirements that need to be followed such as the FSANZ Food Standards Code, the Therapeutic Goods Act and the Trade Practices Act. At times, these are inconsistent, leaving some food being approved under one but not under another. This inconsistency is amplified further when food consumption standards do not harmoniously interact with relevant food production standards that food retailers and manufacturers must also comply with, such as the Australian Pesticides & Veterinary Medicines Association MRL Standard.

There are also different enforcement approaches used by various agencies. Some agencies for example may take an enforcement approach and move straight to a prosecution phase whereas others are more focused on educating and assisting businesses to become compliant. ANRA members support the introduction of a body responsible for providing centralised interpretative advice with regards to food labelling.

Finally, there are inconsistencies in the coverage of food labelling requirements.

For example, if a supermarket's delicatessen department serves a customer while they wait, then the produce does not need to be labelled for ingredients. However, if the same delicatessen department pre-packages products (e.g. salads in tubs) then they are required to label ingredients.

Similarly, current food labelling arrangements mean that goods imported from overseas are not always subject to the same requirements as Australia produced goods (e.g. country of origin labelling).

There also needs to be an increase in coverage consistency between different types of stores. For example, take-away outlets are forming an increasing part of the Australian consumer's diet, yet they are not covered by current food labelling laws even if they sell an identical product to a supermarket.



ANRA considers that these inconsistencies and cross-overs create uncertainty for consumers, businesses and regulators. They also fail competitive neutrality policy objectives and undermine the overall consumer safety and health objectives of food labelling policy.

Progress currently underway

ANRA recognises that there has been some progress made in harmonising regulations and enforcement practices in recent years.

In the absence of a single food regulator, the increasingly close co-operation between Federal and State Governments, facilitated by the Council of Australian Governments (COAG) framework, is commended. ANRA does, however note that further work needs to be done in the area of consistent interpretation of standards and enforcement, so as to give the consumer, retailer and manufacturer more certainty about regulatory response and compliance issues.

ANRA members have also offered positive feedback on a State Government program being run in NSW that increases the consistency of food labelling enforcement. The program is focused on improving the consistency of enforcement practices and almost all Councils in NSW are now signed up to the process. This improves consistency and certainty for all operators and ensures that all consumers have a similar experience, no matter where they live in NSW.

Future steps needed

Focusing on consistency across these four key areas – regulators, food codes, enforcement and coverage – would improve the operation of the food labelling system from the perspective of consumers, retailers and those retailers that also have manufacturing roles via in-house brands.

Specific steps that need to be adopted include:

- Continue the work of COAG – especially around the harmonisation of food regulation and the establishment of the Centralised Interpretative Advice function.
- Expand the NSW Council enforcement program across Australia.
- Remove inconsistencies across the various food requirements – this is a particular problem with quasi health food type dietary supplements.
- Ensure take-away outlets, cafes and restaurants and supermarkets are treated consistently with respect to identical products being sold.

Principle 2: The food labelling regime should recognise that extended labelling (via hotlines or web sites) may be preferable to putting all information about a product on finite packaging space.

In order to minimise the risk of information overload on packaging, food labelling legislation should be focused on the information the majority of consumers need to know to consume food.

This might include information such as:

- Size/weight of product
- Ingredients, with easy to identify common allergens
- Date labelling/Date marking (either Use By or Best Before)
- Basic nutritional information (e.g. kilojoules, sodium and fat content)

ANRA members understand that some consumers seek additional information to assist their purchasing decisions. This information is valued by some customers, but ANRA considers that due to the limited size of product packaging and the need to ensure that key information is not obscured, this information may be best dealt with via extended labelling through mechanisms such as customer hotlines and web sites. In other words, whilst not discounting the importance of this information to certain consumer segments, such information can be provided to consumers in alternative and often more effective manner than product labelling.

The type of information consumers may want to know and could be included via extended labelling arrangements includes:

- Process used to produce the product (eg grain-fed; free-range)
- Information about less common allergens
- Product marketing claims (eg no added sugar; 99% fat free)
- Environmental and social impacts of the product
- Nutritional information in relation to recommended daily intakes

In reality, many manufacturers and retailers will choose to include this additional information on labels, in order to respond to specific customer demand for such information. This trend is already evident with some foods having information about the nutritional content relative to the recommended daily intake – even though this is not a current legal requirement.

ANRA members submit that this should be a decision for the manufacturer or retailer, rather than a legal requirement. The priority for legislated food labelling should be safe consumption of that specific product – not an approach that tries to provide all information about a product to all consumers.

There also needs to be a recognition that consumers can only be provided with available information and that food testing regimes are not inexhaustible. For example, specific nutrients can only be reported if they are able to be supported – either through robust documentary evidence or via direct testing by a retailer. The requisite testing and auditing involved creates cost for both manufacturers and retailers which inevitably will be passed on to customers in final product prices. With this in mind, it is therefore not appropriate, from a cost-benefit analysis, to require retailers or manufacturers to put in place systems to measure, label and provide details on every piece of information that some consumer segments may like to know. This is the case even where extended labelling systems are put in place.

Principle 3: The test for positioning, font size and colours used to display information should be legibility, rather than proscribed requirements.

ANRA considers that the only requirement for food labelling should be that it be legible. That is, it is neither appropriate nor practical to prescribe certain font sizes, colours, positioning for labelling products. Such prescriptive standards ignore and fail to account for the many and varied packaging and merchandising requirements that retailers and manufacturers deal with each day across the thousands of different products that they make and sell. Imposing prescriptive and inflexible requirements also largely overlooks the limited room in packets, on shelves and in display cases that is available for such labelling. Further in retailers' experience, prescriptive standards often undermine the policy intent behind their introduction – a label may meet all prescriptive requirements but still be illegible defeating the purposes for its use in the first place.

ANRA acknowledges that a concern often raised regarding a “readability” or “legibility” threshold is that this is a subjective test, rather than an objective measure. ANRA acknowledges this concern and the compliance issues it may raise, but considers it is relatively easily resolved through applying a “reasonable person” test. This is a test that is used in many other areas of law and can be supplemented by guidance documentation to assist retailers and manufactures.

Principle 4: Information should be useful and easily understood by consumers.

Information is only useful to consumers if they understand what is being communicated and it plays an effective role in informing customers and assisting choice. It is also important that labelling can be practically applied by manufacturers and retailers in way that consumers can understand.

This is not always the case with food labelling information which can cause confusion for a number of reasons. It may be because customers simply do not understand the difference between labelling terms used. Alternatively, confusion can be created where new labelling requirements are introduced or mandated without clear evidence that such labelling assists customer choice or without due consideration as to how retailers can accurately provide this information.

This confusion is well understood by retailers, who are the ‘frontline’ of food labelling and often the main channel through which consumers provide feedback regarding their many and varied concerns about product labelling. As a result, retailers often find themselves devoting considerable time and resources to answering inquiries regarding food labelling legislation and explaining the many complexities of various state and Federal requirements.

For example, ANRA members report Country of Origin information as a source of confusion with many consumers not understanding the difference between terms such as ‘Made in Australia’, ‘Grown in Australia’, ‘Product of Australia’ and ‘Australian Owned’.

As an example of confusion that can be created through the untested introduction of new labelling requirements, ANRA has concerns about the extension of food labelling requirements to alcohol products (a proposal being considered as part of this Review). Alcohol products are already subject to a number of labelling requirements. The extension of further food labelling to these products (for example, through requiring a nutritional information panel) is problematic for three reasons. First, there is little evidence to demonstrate that such labelling is required and will assist customers make informed choice with regard to alcohol products. Secondly, there is a risk that key information such as alcohol content will have less prominence on a label, or be less clear when read with other labelling information. Thirdly, providing such information accurately and consistently across different alcohol products creates a number of challenges for industry.

For example, the nutrition content of wine will vary with normal seasonal variation (climate conditions for vintage). As a result, nutritional information panels will only be indicative of the products composition making exact comparison between different products difficult for consumers.

Finally, a potential future area of labelling confusion currently facing retailers and consumers alike relates to nutrition and health related claims on food products. Currently the ability of food manufacturers to make nutrition and health claims are regulated by multiple, and often inconsistent, regulatory instruments as well as voluntary codes. In general, this has meant that whilst food manufacturers can make some nutrition related claims they are prevented from explaining the potential health benefits of the food they sell via its labelling.

ANRA acknowledges that moves have been made to address this through introduction of the Standard from FSANZ (P293). ANRA is concerned, however, that progress on this Standard is extremely slow and the proposed Draft Standard is complex, prescriptive and ultimately unworkable. As a result, whilst it appears to provide a framework for health claim labelling, it will, in fact, continue to inhibit the ability of retailers and manufacturers to use such labels.

The solution to this problem is a three-pronged approach.

Firstly, there needs to be agreement and consistency amongst producers and manufacturers about the definition of commonly used descriptive terms.

Secondly, there needs to be greater thought given to the whether or not labelling information being proposed actually assists customer choice and can be accurately provided by food manufacturers and retailers.

Finally, a single government body needs to take a greater role in providing centrally accessible information about making dietary choices and interpreting all the information mandated on food labels. Consumers, manufacturers and retailers presently have to research and contact the ACCC (fair trade, & Country of Origin), the National Measurements Institute, FSANZ for the Food Standards Code, and State Governments for the relevant Food Act as well as the many regulations that differ from State to State. ANRA members welcome the COAG decision to establish a Centralised Interpretative Advice function to help provide uniform policy advice in the future.

Principle 5: There should be greater consistency in date marking system for food labels.

One of the key pieces of information for consumers is to understand when food should be consumed by.

Some foods, if consumed past this date, will simply not taste as good. But some goods could make a consumer seriously ill if the date is ignored.

Currently, there are two key concerns around date labelling or date marking (as it is also known) – first, uncertainty around application of date labelling/marketing and the terms that are used. Second there is a corresponding lack of understanding by consumers around what those terms mean.

In terms of application of date labelling/marketing, ANRA considers that further guidance needs to be provided around both what products should be date labelled and how that date labelling should occur.



The AFGC has developed a decision-tool for labelling that helps identify which terms should be used for a particular product – such as Best Before and Use By. ANRA members are of the view that this is a useful tool and could be more widely adopted. However, we recommend further assessment of its potential to promote over use of use-by dates, which exposes retailers (not manufacturers) to increased litigation despite there being no food safety issue.

In addition to confusion around the exact terms that are used, further issues arise due to the different date formats that are used on some imported foods. Some imported goods use different date formats which make it hard for Australian consumers to read the date (eg Americans write Feb 1 2010 as 2/01/2010 – but to most Australian's this would mean Jan 2nd 2010.) There needs to be a nationally consistent date label to overcome this confusion.

In the interests of making it easier for consumers and retailers to understand date marking / date labelling, ANRA believes there needs to be greater guidance around the format and use of date marking / date labelling. Consistent with the comments above, despite the need for more consistency, ANRA does not consider it appropriate to prescribe the placement or format of date labels. Rather, ANRA considers that what is needed is a requirement that date labelling / date marking be clear, legible and easily understood by Australian consumers.

There is also a lack of consumer understanding about the difference between use-by, best before and other terms used on products. Widening the use of initiatives such as that of the AFGC's decision tool, would need to feed into the Government's consumer education campaign to ensure that consumers gain a clearer understanding.

Concluding Comments

If adopted, these five principles would underpin a food labelling system that is informative, concise, clear and consistent. Such a system would allow consumers to make informed decisions about the food they purchase and achieve an appropriate balance with the need for businesses to minimise costs by avoiding constant changes in labelling requirements.

Once again, ANRA welcomes the opportunity to contribute to this Review.

Any questions arising from this submission should be directed to Margy Osmond, CEO via mosmond@anra.com.au or (02) 8249 4520.



APPENDIX 1: ORGANISATION DETAILS

The Australian National Retailers Association (ANRA) represents the leading national retailers in Australia, across a broad range of retail products and services. Members of the Association include Australia's most trusted household names in supermarket chains, department stores and speciality retailers.

ANRA members are:

Woolworths Ltd*	McDonalds	Bunnings Group
Coles	Just Group	Best + Less
Franklins	David Jones	Redgroup Retail
Reece	Luxottica Australia	Harvey Norman
Spotlight	Forty Winks	Super Cheap Auto Group
CostCo	Dymocks	

**incorporating Supermarkets, Big W and Dick Smith.*

ANRA members employ over 450,000 Australians ANRA members employ over 450,000 Australians, which represents almost 1 in 20 Australian employees.

ANRA was formed in 2006 to ensure that governments, and the community, understand the contribution retailing makes to the national economy. The retail sector touches the lives of all Australians every day. An efficient, competitive retail sector generates tremendous consumer and economic benefits. ANRA seeks to ensure that public policy makers understand the retail sector and support policies which enhance the capacity of the sector to meet consumer needs.