Complementary Healthcare Council
of Australia

Review Secretariat
MDP 150
GPO Box 9848
Canberra ACT 2601

Dear Secretariat

CHC Submission – Issues Consultation Paper: Food Labelling Law and Policy Review

Thank you for providing the opportunity for the complementary healthcare industry to comment on the Issues Consultation Paper: Food Labelling Law and Policy Review, dated 5 March 2010.

The Complementary Healthcare Council (CHC) is the leading expert association exclusively committed to a vital and sustainable healthcare products industry. The CHC is unique in representing all stakeholder groups in the complementary healthcare industry; our members include importers, exporters, raw material suppliers, manufacturers, wholesalers, distributors, retailers, practitioners, consultants, direct marketers, multi-level marketers and consumers.

We are the principle reference point for members, government, the media, and consumers to communicate about issues relating to the complementary healthcare industry.

The CHC supports a review of food labelling and advocates for consumer protection from misleading or false claims; particularly in relation to health claims. In tandem with this review, the CHC hopes that enforcement of any consequential labelling requirements is 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 suggests that if health claims on food labels are to be allowed, enforcement needs be applied consistently and the claims should be substantiated by sound scientific based evidence.

The CHC would like to provide the following comments to the identified questions presented in the consultation document:

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

   The CHC considers the food regulatory system should be used to ensure consumers have a level of confidence that the food to be consumed is safe and of a suitable quality, without losing appropriate marketing competitiveness. Furthermore, the CHC strongly recommends that any health claims related to foods should be supported by appropriate evidence. One way to ensure this would be to replace the Code of Practice on Nutrient Claims in Food Labels and in Advertisements with something like the FSANZ Code (evidence based) with suitable enforcement processes.

2. ***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 (e.g. education or website)?***

   The CHC considers the current labelling requirements for food products to be sufficient in providing consumers with information. The CHC believes there should be no mandatory requirement to deliver health messages via foods however, if they are present, they should be delivered in an appropriate

AFA House, 39 Geils Court
Deakin ACT 2600
PO Box 104
Deakin West ACT 2600
P +61 2 6260 4022
F +61 2 6260 4122
W www.chc.org.au
E chc@chc.org.au
ABN 34 874 859 470

manner, be compliant to standards and enforced adequately to ensure consumers are not being misled.

3. How can accurate and consistent labelling be ensured?

The following identified points may contribute to ensuring accurate and consistent labelling of foods:

- Workshops and training seminars conducted by FSANZ (with state authority input and presence), held regularly to ensure 'new' staff/companies to the industry are updated. It also provides a 'refresher' for those who have been in the industry for some time.
- A Code of Practice for labelling of foods which is enforced appropriately as a means to self-regulate industry – this would be in addition to regulatory requirements and enforcement.
- Appropriate enforcement of labelling requirements - members have also suggested that for high-risk food products, it may be beneficial to have a label verification process.

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

The government should have clear regulations around food labelling and intervene when necessary to ensure compliance to evidence based health claims which will assist in a 'level playing field'. Effective enforcement is imperative to compliance therefore government needs to resource appropriately.

Risk levels of foods should be determined through a pre-evaluation process by government (FSANZ) whilst the risk level of manufacturers should be determined through audits which should be conducted on a periodic basis (similar to the process used for complementary medicine manufacturers).

Consumer understanding of food labelling, particularly in relation to health claims, needs to be considered in decision making relating to appropriate food labelling.

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

Any non compliance to regulatory requirements should initiate government intervention; the CHC considers non compliance to be a serious concern for consumer safety and the credibility of the industry.

Other tools which may be important in initiating intervention include:

- Frequency of consumer queries/complaints of specific food products or manufacturers, particularly those related to safety concerns or unacceptable marketing; and
- Frequency and geographical locations of reported health cases post consumption of a specific type of food or food product.

6. Is this a satisfactory spectrum for labelling requirements?

The CHC considers that, in general, the current level of information is sufficient as a minimum requirement for industry. However, the CHC notes the interpretation of the Food Standards Code can be difficult for industry, particularly in relation to labelling requirements. For example, industry is unclear as to what is required on secondary packages such as wrappers on muesli bars which are sold in a box of 10 bars?

By providing further clarity around labelling requirements, industry would feel confident in understanding the regulatory expectations.

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

The CHC suggests conducting a thorough review or assessment to determine what topics/issues were misunderstood or not agreed to and work towards a resolution.

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

In general, the CHC considers the purpose of food labelling is to indicate the content and nature of the product – **health claims should only be permitted on foods where a detailed assessment of the evidence has been conducted, including the claims to be used.** Health claims should only be permitted to be used upon pre-evaluation by a government body, such as FSANZ, where the scientific evidence supports the level of claim to be used for the product. Furthermore, the CHC strongly recommends that any company wanting to make health claims on foods should be subjected to similar quality standards and similar manufacturing standards as required for complementary medicines. In addition, the food should be required to clearly show the quantity and type of 'active' ingredient(s) and display the recommended daily intake to enhance consumer understanding.

The CHC considers that without these standards in place, there is an unlevel playing field for the complementary medicine industry – complementary medicines are strictly regulated and enforced and, if listed, are only permitted to make low to general level health claims. Allowing foods to make health claims without requiring similar manufacturing standards or evidence substantiation is unfair and misleading to consumers.

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

There should be a standard format for expressing or listing colourings, flavourings et cetera, that is enforced by government. And, as stated above, any 'active' ingredient(s) incorporated into a food product for 'health' purposes should be clearly labelled including the type of ingredient responsible for the health benefit. It has been suggested these requirements could be outlined in an industry Code of Practice (as discussed earlier in this submission) as a means of self-regulating.

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

Health claims should only be permitted on foods if there is sound scientific evidence to support the claims; these claims should be low level in nature. Furthermore, the foods making health claims should be subject to similar quality standards and similar manufacturing standards as those required of complementary medicines.

Evidence should be pre-evaluated before the claim can be used on the market. Noting there could potentially be a large number of health claims requiring a detailed review, the CHC questions how the government would resource this and suggests this be carefully considered?

Given complementary medicines are regulated by a different regulatory agency to foods, there should be 'cross-over' or regular communication between the two agencies to ensure the levels and types of claims being made are consistent and/or appropriate across both industries for the product in question.

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

The CHC considers that aligning regulations of health claims across both food and complementary medicines will increase the already concerning 'grey area' of the food/medicine interface. There is

existing 'confusion' between a complementary medicine and food products (particularly in those specialised areas such as sports foods) by regulators, industry and consumers.

The CHC points out that by allowing health claims for foods, a marketing edge is given to a group of products that are not as highly scrutinised as complementary medicines. This is not creating a level playing field considering similar health claims could be used.

Some issues in aligning the regulations across the two industries include:

- Complementary medicine manufacturers are required to comply with Good Manufacturing Practice (GMP) to ensure the quality and safety of a product. This standard also supports evidential claims by demonstrating content claims i.e. each tablet contains x % of the active ingredient. Currently, food manufacturers are not required to manufacture their products to the same standard – ***there should be an accreditation for food manufacturers similar to GMP licensing to support any health claims.***

- Enforcement of standards for complementary medicines is very rigorous and strict; this is not the case for foods. One reason is that complementary medicines are regulated by a national authority which generally results in consistent decision making. Foods however are regulated by state authorities which means inconsistency in outcomes, depending on the state – ***having a national authority responsible for enforcement of foods and therefore health claims would assist in resolving this issue.*** Not properly enforcing health claims also creates a bigger public health issue in that consumers may consider the foods being consumed provide the same health benefit as a complementary medicine which in many case may be incorrect for a number of reasons.

- If enforcement is not addressed, complementary medicine manufacturers may cross over to the food industry to escape the restrictive requirements imposed on the medicine industry (compared to food products) i.e. post market review, quality and safety. This in turn could pose more confusion around the food/medicine interface and make it harder for consumers to make informed choices.

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

The CHC does not believe that specific health warnings are necessary as specific food products may only make up a small part of the overall diet of an individual. If the remaining diet is healthy, the warning may create unnecessary concern. To address this issue, the CHC considers it more appropriate to continue educating consumers on how to eat an overall healthy diet.

13. 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 CHC considers that the Food Standards Code should contain information relevant to required standards for foods and not address additional consumer related concerns. The CHC suggests that food labels be used to provide appropriate messages relating to public health and safety.

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

To determine future inclusions of specific information, the CHC recommends conducting a broad survey or perhaps approaching organisations with consumer members to seek feedback.

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

The CHC notes that if there is an existing requirement for Australian foods to state the country of origin, and appreciating that the Food Code can apply across Australia and New Zealand, it may be possible to require New Zealand to also comply. However, unless there is a known safety issue with a specific food from a particular country, there does not appear to be an immediate need therefore the statement could become optional; the CHC does note that this will limit consumer information.

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

The definition could be reviewed and simplified. Consumer education would also assist with this issue.

17. Is there a need t 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 references in the Food Standards Code?

The CHC notes there is no widely (globally) accepted definition of 'natural' and considers that if one is to be adopted there be appropriate industry consultation. The CHC supports the concept of claims, such as those stated above, be included or referenced in the Food Code or possibly the Code of Practice (as discussed previously).

The CHC acknowledges that not only will food enforcement agencies need to monitor the use of these claims, but also the Australian Competition and Consumer Commission (ACCC) to prevent misleading or untrue claims being used.

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

The CHC does not believe that environmental or vegetarian claims are the responsibility of the Food Standards Code however supports their use where appropriate. Given the nature of the claims, the CHC considers the ACCC to be the most suitable enforcement agency. Furthermore, the ACCC (in conjunction with FSANZ), and other relevant government and industry stakeholders should work together through a comprehensive consultation process to determine suitable criteria.

19. 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?

Manufacturers and regulators need to determine a way of being publicly transparent about food ingredients, treatment processes et cetera and they must publicly defend their decisions in relation to the safety of these products. For example, while the use of some intense sweeteners is still controversial, there is adequate industry and government information available to consumers to help them make appropriate informed choices.

Appropriate consultation is needed between government and industry stakeholders to determine which processes should be mandatory for labels and which are not.

20. 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?

The CHC provides no comment as it is outside of the organisations mandate.

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

The CHC does not support minimum font size for all wording however a minimum size should be established for critically important information such as mandatory warning statements and ingredient lists.

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

The CHC points out that complementary medicine labels are currently assessed for legibility and durability against the criteria outlined in Part 3 (1) of the Therapeutic Goods Order TGO 69 – *General Requirements for labels of medicines* (refer to http://www.tga.gov.au/docs/pdf/tgo/tgo69.pdf).

Given this, the CHC considers it is possible to test legibility and readability of food product labels.

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

The CHC feels that as long as the label is easy to read, legible, truthful and informative, there is no need for the government to set any more specific requirements relating to 'information overload' and questions how 'too much' information would be assessed. Furthermore, the CHC considers that having a minimum font size requirement may reduce the amount of information able to fit onto a front label which may assist in improving this issue.

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

It should be noted that different foods have different levels of complexity therefore it may be difficult to set a broad standard across the industry. The CHC notes the greater the consumer awareness of a specific issue, the greater the need may be for additional information.

Some options for maximising consumer understanding include:

- Company websites including general information about benefits of particular foods could be utilised as long as the information is correct and unbiased;
- Generic information on government health websites;
- Government pamphlets which could be distributed;
- Education about foods in schools, universities or other educational institutions; and
- Greater consumer awareness through campaigns or through consumer organisations.

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

The CHC supports the use of pictograms etc which infer a particular certification or approval to assist informed consumer choice as long as it is truthful and not misleading. The CHC considers the only role government should play in regards to pictorial icons is in relation to this matter i.e. is the product truthfully using an icon. This should be the role of the ACCC.

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

The CHC has no specific comment relating to format of front-of-pack labelling however agrees that any progression of a format should involve a broadly-based public awareness campaign.

27. 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?

The CHC has no specific comment relating to this matter. However, it appears that this would be quite burdensome to require all of the required information on food products to be listed on packaging in these particular facilities.

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

The CHC supports the Food Standards Code being the means for setting standards relating to food advertising. Currently the complementary medicines industry has a Code of Practice for advertising which is enforced by a single complaints committee; the CHC strongly supports that food advertising be enforced in a similar manner.

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

The CHC considers that having a single enforcement agency in each country, where industry can seek advice on interpretation, would resolve any concerns relating to consistency.

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

Enforcement by a national agency located in each country, would be the best way to achieve consistency in food labelling standards, and more importantly, transparency in applying food regulations. The CHC notes that despite the efforts of the Food Regulation Standing Committee and its working group, the Implementation Sub-Committee, there are often circumstances where the two committees have conflicting positions. The CHC recommends there be one agency to overcome this issue.

From a cost perspective, it would be easier to fund one agency to enforce labelling standards and would enable there to be a post market surveillance unit similar to that currently present for complementary medicines.

31. 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?

<u>Strengths:</u>

- more government accountability;
- consistency in decision making, more uniform interpretations;
- greater transparency;
- better chance of gaining adequate funding for enforcement purposes;
- easier for industry to deal with one single agency.

<u>Weaknesses:</u>

- cost may still be an issue, resourcing for enforcement purposes;
- response time.

32. 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?

Strengths:

- historical knowledge and experts within the Australian and/or New Zealand environment could be utilised.

Weaknesses:

- having slightly different requirements and commercial environments may create some issues.

The CHC considers having a special unit within FSANZ as the most appropriate option as it would be able to address specific issues and have considerable expertise and knowledge of the food environment. The CHC envisages that this unit would work closely with industry, similarly to that of the Therapeutic Goods Administration, and would be responsible for administrating the standards required for food labelling.

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

The CHC is unable to provide any comment on this matter however suggests suitable consultation occur with industry to address this matter.

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

Advantages:

- no bias in decision making as government has no commercial gain.

Disadvantages:

- government has full power of decision making.

35. 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?

The CHC notes that self regulation has been tried in the past however was not overly successful (Code of Practice on Nutrient Claims) therefore to ensure compliance and standards, and to permit a level playing field, meaningful penalties for serious non-compliance should be available to government. However, self regulation is important and should be encouraged and utilised.

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

Strength:

- decisions are made based on one regulation or standard.

Weakness:

- splitting responsibilities mean there may be the potential for inconsistency in decision outcomes.

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

The CHC does not believe that the current processes which define a product as a food or a complementary medicine are greatly inadequate. Many 'food products' are making illegal health or therapeutic claims yet often no regulatory action is taken. This creates an unlevel playing field when complementary medicines are highly scrutinised on a regular basis – both by the regulators and consumers.

The CHC does not support foods that make illegal therapeutic claims and hopes that this review may work to address this issue. Whilst the CHC appreciates there may always be a 'grey area' around the food/medicine interface, regulating foods making health claims and controlling them in a manner similar to complementary medicines, may help clarify some of these issues.

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

The CHC does not support the concept of having different approaches to labelling requirements for domestic vs. imported food products – this would not instil confidence in industry that government is working towards a level playing field. The CHC recommends there be the same enforcement requirements for both local and imported foods.

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

All foods sold in Australia should be subjected to the same inspection requirements – not necessarily Australian Quarantine and Inspection Service (AQIS) alone. Differing requirements in New Zealand should not result in an unlevel playing field in Australia.