



Submission to the

**Productivity Commission
Issues Paper**

on

**PERFORMANCE BENCHMARKING IF
AUSTRALIAN BUSINESS REGULATION:
*FOOD SAFETY***

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About CHOICE

CHOICE is a not-for-profit, non-government, non-party-political organisation established in 1959. CHOICE works to improve the lives of consumers by taking on the issues that matter to them. We arm consumers with the information to make confident choices and campaign for change when markets or regulation fails consumers.

Introduction

CHOICE appreciates the opportunity to provide the following comments on the *Productivity Commission Issues Paper on Performance Benchmarking of Australian Business Regulation: Food Safety*.

Food regulation has long been one of CHOICE's key policy priority areas. For many years we have worked with regulators, enforcement agencies, governments, industry and other non-government organisations to ensure that the food supply is safe to eat, that it protects and promotes the health of Australia consumers, that consumers are able to make informed choices about the food they buy and that food is not sold or marketed in a misleading or deceptive manner.

The focus of this current issues paper is 'food safety regulation'. However, CHOICE believes that in various sections throughout this issues paper, the Productivity Commission interprets 'food safety regulation' as what many others, including CHOICE, would consider to be 'food regulation'.

Footnote 1 on page 8 of the issues paper states that "Certain food safety regulations include objectives other than food safety" and lists nutrition information and fortification as examples of 'nutritional outcomes' achieved by food safety regulations. It then states that issues these are not outside the scope of the study.

It is unclear where the Productivity Commission believes the line between 'food safety regulation' and 'food regulation' is drawn and therefore which aspects of food regulation, specifically the Australian New Zealand Food Standards Code, are within the scope of this study and which aren't. This submission will therefore address a broad range of food regulatory matters based on CHOICE's years of advocacy work in this area. It will also reiterate a number of points made in submissions to previous reviews of food regulation such as the Bethwaite Review.

We also believe it is vital to cover food regulation more broadly as many aspects of food regulation are designed to protect the long-term health and interests of consumers. While business may view some provisions of food regulation (e.g. labelling) as an unnecessary burden, these provisions perform a vital consumer protection function that should not be underestimated.

As such, this submission will:

- comment generally on CHOICE's view of regulation;

- discuss the objectives of and responsibility for food regulation, including the potential for inconsistencies between state and territory and Commonwealth government regulation and enforcement;
- examine the role of food regulation in protecting public health and consumer interests; and
- outline the need for government regulation and better enforcement of health claims and other food labelling requirements.

General comments on regulation

CHOICE is aware that regulation is increasingly being subject to scrutiny in order to minimise the negative impact of regulation on business. CHOICE previously provided a submission to the Australian Government's Review of Regulatory Burden on Business. We have also provided submissions to other reviews of food regulation such as the Bethwaite Review and the Victorian Competition and Efficiency Commission (VCEC) review of food regulation in Victoria, as well as the Productivity Commission's previous review of the regulatory burden on manufacturing and distributive trades, of which food regulation was a focus.

CHOICE does not believe in regulation for the regulation's sake. Government regulation will not always be the best and most effective way of protecting consumers, nor is it always necessary. Poor, ineffective and unenforced regulation can be just as bad for consumers as having no regulation at all.

Some regulation is introduced as a knee-jerk reaction or irrational response to community fears or concerns. If the feared harm is unlikely to occur or the potential consequences are not significant then the greater good might be better served by letting the risks lie where they fall.

On the other hand, much regulation is essential to the practical operation of markets and to creating and preserving the trust of consumer and businesses in them. Further, good quality regulation is often the most efficient way to protect consumers from unfair practices when those markets don't work as well as they should or fail to adequately protect consumers.

CHOICE rejects the notion that 'red tape' unnecessarily stifles innovation and limits the legitimate activity of business. Naturally, views will differ depending on whether one's interest is in promoting industry innovation or protecting consumers from inappropriate products and practices. In our view there should be as little regulation as possible but as much as is necessary to protect consumers. The Productivity Commission study of food safety regulation must balance the need to protect consumers from unsafe foods and unscrupulous practices in the food industry, with the desire to reduce cost on industry and to promote innovation and development within the food industry.

Clarifying the objectives of and responsibility for food regulation

The *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) outline the objectives of food regulation as:

1. the protection of public health and safety;
2. the provision of adequate information relating to food to enable consumers to make informed choices; and
3. the prevention of misleading and deceptive conduct.

In Australia, food regulation is established by Food Standards Australia New Zealand (FSANZ). FSANZ maintains and amends the Australia New Zealand Food Standards Code (the Food Standards Code) under the guidance of the Australian New Zealand Food Regulation Ministerial Council (Ministerial Council).

It is the responsibility of the state and territory governments to enforce the Food Standards Code. This is done through state government food acts. CHOICE believes that confusion over the responsibilities of state governments and their relevant enforcement agencies lies partly in the fact that the FSANZ Act objectives are not replicated in all state government food acts. If a food act does not articulate the role of food regulation in protecting public health, providing consumer information and preventing misleading and deceptive conduct then there will inevitably be confusion as to the extent to which state government agencies are responsible for these aspects of food regulation.

The 2007 VCEC review of food regulation in Victoria recommended clarification of the objectives of food regulation and accountability between levels of government, particularly at the state government level. CHOICE was particularly concerned that the VCEC report suggested that no Victorian agency had specific responsibility for enforcing food labelling laws. Given the number of state government agencies responsible for food regulation and enforcement in Victoria, CHOICE agrees that there needs to be clarification of the objectives of food regulation in Victoria and the responsibility of each agency in achieving these objectives. Further, it is essential that *all* state and territory government food acts replicate the three primary objectives of the FSANZ Act, to ensure that they appropriately fulfil their role of enforcing the Food Standards Code.

Consistency between state and territory and Commonwealth government regulation and enforcement

CHOICE acknowledges that there may be inconsistencies between Commonwealth and state and territory regulations, and enforcement of these regulations, which place undue burden on the food industry. All food businesses in Australia must comply with the Food Standards Code. Producers and manufacturers that conduct business in a number of states and territories may also be required to meet different state and territory regulations.

CHOICE also acknowledges that the division of responsibilities between state and territory and Commonwealth governments for regulating and enforcing food standards

may result in duplication of regulation or inconsistencies in interpretation and enforcement. CHOICE agrees with the principles of minimising duplication and addressing inconsistencies provided that food safety, public health and consumer protection requirements are still met.

As a result of the Food Regulation Review (the Blair Review) undertaken in the late 1990's, FSANZ commenced development of a number of primary production and processing standards. These standards will ensure that the Food Standards Code covers the entire food supply from "paddock to plate". Until these standards are developed, these industries will be governed primarily by state-based regulation.

The seafood and poultry primary production and poultry standards was the first to be developed, and similar standards for raw milk products, egg and egg products, dairy and poultry meat are currently being developed. CHOICE understands that there is some uncertainty among industry groups and enforcement agencies about the implementation and enforcement of these standards. CHOICE asks that issues of enforcement and implementation are clarified and clearly articulated to all stakeholders so that the new primary production and processing standards do not cause further confusion or unnecessary burdens for businesses and enforcement agencies.

CHOICE is also concerned that there are inconsistencies in the monitoring and enforcement of food safety standards across Australia. Two recent CHOICE investigations highlighted pesticides and food hygiene inspections as areas of inconsistency.

Pesticide residues

All foods sold in Australia must comply with the Food Standards Code, which specifies the pesticides that can be used on certain products and the maximum residue limits (MRL) permitted. Technically, foods can't be sold if they contain residues for pesticides that aren't permitted for that food or if the levels of pesticides exceed the relevant MRLs. These restrictions apply equally to foods produced in Australia and those imported into Australia.

There is no consistent enforcement program across the states and territories that assesses the level of compliance with the MRLs in both imported and locally produced foods. The level of monitoring varies from state to state. At the time of publication of the CHOICE article (April 2006):

- ⇒ ACT and Tasmania did no testing at all.
- ⇒ The NSW Department of Primary Industry was funding a new program to test local produce but not at retail outlets.
- ⇒ The NT Department of Primary Industry tested locally grown produce only.
- ⇒ The Queensland Department of Primary Industry tested samples from suppliers and occasionally farmers markets, but not at retail outlets.
- ⇒ South Australia tested locally produced fruit and vegetables in 2003 but hadn't done any subsequent testing.
- ⇒ Victoria regularly tests locally produced fruit and vegetables but does not sample retail outlets.

- ⇒ The WA Department of Health had an ongoing testing program, surveying fruit and vegetables every two to five years, including samples from retail outlets.

Australia also imports produce, some of which comes from countries with a less stringent approach to agricultural chemicals. Some produce may be contaminated by pesticides that aren't permitted here or contain pesticide residues at levels that exceed the Australian MRL. Surveys in the UK have found that imported food is more likely to contain detectable levels of pesticide residues than local produce.

The Australian Quarantine and Inspection Service is responsible for ensuring that imports comply with the Food Standards Code but their testing regime means only a small minority of fruit and vegetable imports are tested for pesticide residues

Restaurant hygiene

Another area of inconsistency is the publication of hygiene inspection information. CHOICE's November 2007 report on restaurant hygiene inspections showed that the availability of information about food safety inspections varied from state to state.

Overall administration of food safety occurs at the state level, with local councils carrying out restaurant inspections. The frequency of inspections can vary from council to council and state to state and can be at the discretion of the inspecting officer. Generally speaking the frequency depends on the risk the food outlet poses and its compliance history. Some may be inspected every 18 months, others every six months.

Inspectors have a number of enforcement options available to them including written warnings, improvement notices, penalty or infringement notices, and in extreme cases prosecution. But the choice of enforcement options for similar infringements may differ between states, councils and even individual inspectors.

Inspection reports and details of notices or fines are not made public. When CHOICE surveyed states and territories about this:

- ⇒ NT, Queensland, SA Tasmania and Victoria had no immediate plans to improve access to information.
- ⇒ NT planned to consider the merits of various food hygiene ratings systems.
- ⇒ The SA Department of Health was also examining different models.
- ⇒ A review of food regulation was underway in Victoria and was considering different approaches, including name-and-shame websites. The review subsequently decided against this approach, limiting public information to outcomes of court proceedings and orders to close premises. They also supported voluntary approaches by some councils such as star ratings systems to recognise good performers.
- ⇒ The NSW Food Authority had established a website to name and shame poor performers that had committed an offence under the Food Act. This website now also names businesses that are issued penalty notices.

- ⇒ The WA government was in the process of developing a similar website. Notification of convictions are published on the WA Department of Health website.

In the US, UK, Canada, Denmark and New Zealand, food inspection information is published on a central website and/or displayed at the premises. CHOICE wants a similar, consistent approach to publication of hygiene information in Australia so that consumers can make informed decisions about where to eat regardless of where they live. It would also provide an incentive for businesses to improve and maintain good standards of hygiene, which would in turn help to reduce the risk of food-borne illness.

Food regulation and public health - beyond food safety

As outlined above, and in the Section 18 objectives of the FSANZ Act, food regulation is about more than just ensuring food safety and protecting consumers from the more immediate food safety risks posed by food-borne illness and contamination. The primary objective of the FSANZ Act is to “protect *public health* and safety” (emphasis added).

Food regulation must therefore support other public health strategies to reduce the burden of diet-related disease that results from long term consumption of certain foods, such as those high in saturated fat, sugars and salt. Food regulatory decisions – when made without regard to public health implications – have the capacity to undermine public health initiatives. We do not suggest that food regulation is unduly relied on to meet national health objectives, but food regulation must be part of a comprehensive strategy to address diet-related conditions such as obesity, heart disease, Type-2 diabetes and some cancers as well as nutrient deficiencies.

As noted in previous submission, CHOICE believes that defining “public health and safety” in the FSANZ Act and the subsequent Food Acts would help to ensure that “public health and safety” addresses more than just food safety and food-borne illness. Despite the fact that “protection of public health and safety” is the primary objective of food regulation there is no definition of “public health” or “public health and safety”. This results in varying interpretations of this objective and in some cases it is interpreted as pertaining only to immediate food safety risks and food-borne illness. We believe that the lack of clarity on the scope of this current issues paper is further evidence of this. Such a limited view of public health and safety only addresses the short-term health impact of food regulation rather than the long-term impact on the health and nutrition of individuals and populations.

Overweight and obesity

More than half of all Australian adults are overweight or obese. The total cost of obesity in Australian in 2008 was estimated to be \$58.2 billion¹. This includes direct

¹ Access Economics (2008), The growing cost of obesity in 2008: three years on. Access Economics Pty Ltd.

health care costs as well as the indirect costs of lost productivity resulting from obesity related illness.

There are many causes of overweight and obesity but for most people it is preventable through healthy eating and regular exercise. CHOICE believes that there needs to be greater consistency between any Commonwealth government obesity prevention strategy and the decision-making processes of FSANZ, the Food Regulation Standing Committee (FRSC) and the Ministerial Council.

As overweight and obesity is one of the biggest public health problems facing Australia today, obesity prevention should underpin all food regulatory decisions. Such an approach would be consistent with the primary objective of protecting public health and safety.

A number of recent decisions outlined below suggest that food policy and regulatory decision makers do not give adequate consideration to obesity prevention and the long-term public health and nutrition implications of food regulation. Given that the state and territory governments have a significant role in accepting FSANZ recommendations it is vital that State Ministers are aware of the public health implications of FSANZ decisions.

Formulated beverages

Following an application from the beverage industry, the Ministerial Council approved the production of formulated beverages in Australia. These water-based beverages can contain fruit juice, sugar and/or artificial sweeteners, and are fortified with a range of vitamins and minerals.

FSANZ has set limits on the sugar content of formulated beverages but it is set so high that one 600ml serve of a formulated beverage could provide an adult with 50% of their recommended daily intake of sugar. Given that intrinsic and added sugars are likely to be consumed in many other foods throughout the day (e.g. fruit, breakfast cereals, milk and sugar added to tea and coffee) it is likely that a person who consumes one of these beverages would exceed their recommended sugar intake.

Presenting sugary drinks as a source of vitamins and minerals runs counter to public health efforts that encourage consumers to reduce their intake of sweetened beverages and other energy dense foods. Decisions such as this only serve to add to Australia's escalating levels of overweight and obesity as they enable sugary foods and drinks to be marketed as healthy products because of added vitamins and minerals.

In addition to this, at the time FSANZ proposed to permit these beverages it was also considering two proposals on the mandatory fortification of folate and iodine in order to prevent neural tube defects and iodine deficiency disorder respectively. Mandatory folate and iodine fortification is intended to address the public health consequences of deficiencies in these nutrients. CHOICE believes that had FSANZ given adequate consideration to the public health implications of folate and iodine fortification it would not have permitted the voluntary addition to formulated beverages until the mandatory fortification proposals had been finalised. Instead, folate and iodine were

among the vitamins and minerals that FSANZ allowed manufacturers to add voluntarily to formulated beverages.

Health claims

In the 2005/06 review of FSANZ assessment and approval processes, nutrition and health claims were not considered to be issues of public health and safety. Rather health claims were considered consumer information only. It was on this basis that the Food Regulation Standing Committee (FRSC) working group justified the removal of all public consultation on health claims applications. The report reasoned that only matters directly relating to public health and safety should require a full, open and transparent assessment process.

For many years CHOICE has opposed the use of health claims on food labels. We believe that they are little more than marketing messages encouraging consumption of processed foods because of their potential health benefits. In reality, it is unlikely that an individual product will deliver a health benefit. Yet, the food industry and regulators have previously defended health claims on food labels suggesting that they would assist consumers to make healthy choices thus improving public health.

In this case, authorities were selective in their interpretation of “public health and safety”. Agencies that initially supported the use of health claims because of the potential public health benefits later suggested that health claims provided consumer information only, in order to justify relaxing regulatory measures and removing statutory requirements for public consultation.

Folate fortification

CHOICE understands that some food industry groups are concerned that the mandatory fortification of bread making flour with folic acid represents the use of food to address a public health problem in the absence of other public health measures. While CHOICE does not disagree with the principle of fortifying foods to address certain nutrient deficiencies that are widespread throughout the population, we share the concerns that mandatory fortification was not presented as part of a broader public health strategy to prevent neural tube defects through other initiatives such as the promotion of folic acid supplement use and health promotion campaigns encouraging the consumption of food naturally rich in folic acid.

Having said that, CHOICE believes that if a nutrient deficiency is significant enough that fortification is considered to be an effective public health strategy to address it, we believe that it should be mandatory rather than voluntary. Voluntary fortification is reliant on industry uptake of fortification permissions. If uptake of voluntary fortification permissions is limited then voluntary fortification will not successfully address the deficiency.

Regulation of food labelling

CHOICE understands that some government agencies and industry bodies are suggesting that food labelling does not warrant specific mandatory government

regulation. The VCEC report recommended that a proposed review of country of origin labelling requirements should look more broadly at all labelling requirements with a view to considering the cost effectiveness of alternatives to mandatory requirements. This is intended to reduce the regulatory burden on business and at the same time promote innovation.

A comprehensive review of food labelling law and policy has since been announced by the Australia New Zealand Food Regulation Ministerial Council, following direction from the Commonwealth of Australian Governments Business Regulation and Competition Working Group to reduce regulatory burden in this area.

In May 2009, CHOICE urged health ministers to ensure that the terms of reference for the labelling review include not only the protection of public health but the second and third objectives of food regulation outlined in Section 18 of the *Food Standards Australia New Zealand Act 1991*, relating to consumer information and misleading conduct.

Food labelling laws and policies are vital in achieving all three primary objectives of food regulation. Any move to weaken the level of government oversight of food labelling or indeed the primary objectives of food regulation relating to consumer protection will significantly damage consumer confidence in the food supply, the independence of Australia's food regulatory system and its commitment to protecting the interests and health of Australian consumers.

CHOICE supports all the current mandatory information requirements on food labels. Information such as date marking, storage suggestions, allergen labelling, ingredient lists and nutrition information panels protect the health and safety of consumers and allows them to make informed choices about the content of the foods they eat and the impact it may have on their health. With consumers increasingly interested in how and where their food is produced, genetic modification, country of origin and organic and free range labelling also require regulation to ensure that consumers are getting what they pay for.

While CHOICE is not opposed to self-regulatory and co-regulatory measures in principle, our experience in with the regulation of food labelling requirements suggest that voluntary measures are not sufficient to provide consumers with a wide range of information that they require about the food they eat.

Our experience in a range of industries is that there is a danger that self-regulatory arrangements can destroy the essential competitive neutrality of a simple, clear and effective regulation; where the monitoring and/or penalty arrangements are inadequate, unethical businesses are able to obtain an advantage over those that more closely adhere to the letter and spirit of the self-regulatory arrangements.

A self-regulatory scheme for food labelling would be a regression in the level of consumer protection at a time when there is already sufficient evidence of non-

compliance^{2 3}. It would also fail to recognise the vital consumer protection role that mandatory food labelling requirements currently play.

The box below illustrates changes in food labelling that CHOICE has been involved in since the 1970's which have resulted in better consumer information about food.

What's in the box?

At the present time, government and industry are examining the need and desirability for nutrition labelling in Australia," said the CHOICE editorial of May 1975. We campaigned, along with many others, for the right of consumers to make an "intelligent choice" when buying packaged foods. We argued, "the label should tell [consumers] what it is, how much there is of it and what it costs." In the late 1970s CHOICE made the assertion that 'you get more information on pet food labels than on human foods'.

Much campaigning saw a number of breakthroughs. Date stamping is something we now take for granted. In 1975 it was a battleground. "The Grocery Manufacturers of Australia countered our request for open date stamping with the standard response that further labelling will cost the consumers more. Since most manufacturers already stamp products with the date of production in code," said CHOICE, "the simple decoding of these date stamps will not involve any extra expense."

In 1978 'ingredient labelling' was implemented and consumers could see ingredients listed on the label in descending order of proportion.

A significant change occurred in 1984 when the National Health and Medical Research Council (NHMRC) amended its constitution to include two consumer representatives and two industry representatives on its committees. CHOICE was invited onto the nutrition committee and the food standards committee, among others. This gave us the opening to comment on draft food standards, for example.

After a four-year campaign, in 1988 nutrition information panels (NIPs) became mandatory for any food for which a nutrition claim was being made, such as 'low fat' or 'low in salt'. These panels, although limited in application and coverage, would not have come about at the time if it wasn't for the extensive efforts of CHOICE. We were the driving force behind the introduction of NIPs. Indeed, the food industry was dead against these panels appearing on food labels.

In 1999 we argued once more that nutrition information panels (NIPs) should appear on all packaged foods, not just those which made a nutrient claim such as low fat, high fibre or salt reduced. Unbelievably, if a food did not make a nutrient claim then it would escape the requirement for a NIP.

The campaigning effort, sustained over 30 years and right up to today, produced strong gains for consumers. We now have labels on packaged foods which generally provide consumers with:

- Net weight of the food inside
- A listing of ingredients in descending order
- Nutrition information panels - mandatory for all packaged foods
- Separation of saturated fat from 'total fat' and sugar from carbohydrates

² Food Standards Australia New Zealand (2004), *Food Label Monitoring Survey: July 2002 – December 2003*.

³ Williams, PG (2005), *Communication health benefits – do we need health claims?* Faculty of Health and Behavioural Sciences – Papers, University of Wollongong. Accessed 15 June 2007.
<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1010&context=hbspapers>

- Separation of artificial flavours from natural ones
- Separation of sugar as a distinct listing
- Allergy information
- 'Use by' dating (where there may be a food safety issue) or 'best before' dating (for foods where quality deterioration is the main problem)
- Correct storage information (e.g. refrigeration)

While there remain areas of concern, exemption and manufacturer cunning, CHOICE will continue to seek improvements to food labelling, especially in the context of the current debate on obesity.

Source: Where would you be without CHOICE? CHOICE achievements, 1996 - 2006 (CHOICE, 2007)

Nutrition, Health and Related Claims

Responsibility for monitoring and enforcing the current *Code of Practice on nutrient claims on labelling and in advertising* rests with the food industry. We are not aware of any formal process or body that is monitoring and enforcing this code and we continue to see products in the market place making claims that are contrary to this code. We believe that non-regulatory approaches will not provide sufficient disincentive for manufacturers and marketers who want to use misleading and unsubstantiated claims to appeal to consumers.

Nutrition and health claims encourage consumers to purchase a particular product because of the nutritional or health benefit that can be gained, and can therefore have in impact on consumers' health. For this reason, we need strict regulation to deter manufacturers from using misleading or unsubstantiated claims to market foods.

The VCEC suggested that a more relaxed approach to the regulation of health claims would meet consumer demand for healthier food, provided they have confidence in the regulatory structures. However, FSANZ has recently proposed changes to the draft standard on Nutrition, Health and Related Claims that would see the responsibility for substantiating general level health claims shift from food manufacturers to FSANZ itself. CHOICE welcomed this proposal because it would help to protect consumers for misleading and unsubstantiated claims. It would also remove regulatory burden from manufacturers who wish to make certain health claims about their products

Recently, the Australian Competition and Consumer Commission found that certain advertisements for Coca Cola potentially misled consumers about the effects of Coca Cola on tooth decay and obesity. The advertisements did not accurately represent the scientific evidence behind these health effects. This is further evidence that responsibility for substantiating and regulating health claims made in marketing and on labels should not rest with food manufacturers. In fact there is research that suggests consumers do not trust manufacturers' health claims and agree that government approval should be obtained before they are permitted to be made³.

³ As above

Enforcement of food labelling standards

There are inconsistencies in the way regulation is enforced across jurisdictions, particularly in relation to food labels. For example, one state government might be interested in policing country of origin labelling while another may see health claims as an enforcement priority.

Consumers have the right to expect the same level of protection and regulatory action regardless of where they live. Yet the reality is that different enforcement priorities and different interpretation of food standards means that enforcement action is not consistent across states and territories.

There are benefits in exploring the capacity for a Commonwealth agency to take responsibility for enforcement of food labelling. An area that could be used to pilot a single regulator approach is the new nutrition, health and related claims standard. A Commonwealth health claims “watchdog” has been established but it is currently little more than a single mailbox where complaints can be directed then distributed to the relevant state or territory enforcement agencies for action.

CHOICE believes that the Commonwealth health claims watchdog should be responsible for pro-actively monitoring the use of nutrition and health claims and compliance with the new regulation, and undertaking enforcement action where breaches are detected. However, we believe that such a regulator would require nutrition and health expertise as well as adequate funding to undertake pro-active compliance monitoring.

There is justification for considering a more unified approach to other aspects of food labelling such as country of origin labelling, nutrition information panels and ingredients lists. Many packaged food products manufactured in Australia or imported into Australia are sold in a number of states and territories. Food labelling requirements are established by a Commonwealth regulator (FSANZ) and the same regulations apply to all manufacturers regardless of where they are located. Therefore, if a product breaches food labelling laws it is likely to affect consumers across Australia not just those who live in the jurisdiction where that manufacturer or distributor is based.

The cost of regulation

Increasingly, regulatory decisions are based on an analysis of the impact of regulation on business, consumers and governments. CHOICE agrees that such analyses are vital in developing and assessing regulation. However, there are inconsistencies between the level and type of information available to assess the costs and benefits to industry compared to information available to assess the impact on public health and consumers. Businesses may invest in collecting cost-benefit information but it is often left to government agencies to collect data on the positive or negative impacts on public health and consumers.

There is considerable underinvestment in collecting public health and consumer data. This results in one-sided analyses of the impact of food regulation because costs and

benefits to business are more easily quantified and more likely to be collected. The lack of evidence of detriment or benefit for consumers is often used to support an argument that there is no detriment or benefit to consumers in regulating (or not regulating) a certain aspect of the food supply.

There is no ongoing investment in the collection of public health and consumer data needed to inform food regulation. The last extensive collection of data on Australians' food consumption patterns was the 1995 National Nutrition Survey. Now 14 years old, this data is outdated yet it is still used to inform food regulatory decisions such as selecting appropriate foods for mandatory fortification. The previous Commonwealth Government and the Australian Food and Grocery Council funded similar research but the first stage of this research was limited to children only so it will not provide detailed information about the food consumption habits of all Australians. A similar survey of Australian adults is planned.

The Ministerial Council has approved the mandatory addition of folate to bread making flour and the fortification of bread with iodised salt. While FSANZ and state food and health authorities can assess the extent to which bread manufacturers comply with the new standards, there has been no funding committed to assess the intended impact of mandatory fortification on the health of the target groups and any potential adverse impact on non-target groups.

Closing remarks

CHOICE appreciates the opportunity to provide the above comments on the *Productivity Commission Issues Paper on Performance Benchmarking of Australian Business Regulation: Food Safety*. We agree with the principle of reducing unnecessary regulatory burden on food businesses. However, the primary objectives of food regulation are designed to ensure that the food supply is safe to eat; that it protects and promotes the health of Australia consumers; that consumers are able to make informed choices about the food they buy; and that food is not sold or marketed in a misleading or deceptive manner.

The current benchmarking study of the burden of food safety regulation on food business must balance the need to protect consumers from unsafe foods and unscrupulous practices with the desire to reduce costs to food businesses and to promote innovation and development within the food industry.

Should you wish to discuss further any of the issues raised in this submission, please do not hesitate to contact CHOICE's senior food policy officer, Clare Hughes on (02) 9577 3375 or at chughes@choice.com.au.