



Council of Australian Governments
Australia and New Zealand Food Regulation Ministerial Council

By email: FoodLabellingReview@health.gov.au

20 November 2009

Dear Ministerial Councillors,

Review of Food Labelling Law and Policy

Lawyers for Animals thanks you for the opportunity to make submissions in relation to your review of food labelling law and policy.

Lawyers for Animals is a not-for-profit incorporated association run by a management committee of lawyers. Its objectives include: alleviating the suffering of animals by engaging with those who create or administer laws in Australia to strengthen legal protection for animals; developing awareness of animal suffering among the legal profession and the wider Australian public through information and education; and promoting better animal welfare practices amongst animal-related industries in Australia.

A SUMMARY

Lawyers for Animals submits that food labelling laws should:

- (a) mandate that food labels state:
 - (i) if any animal was used to test the safety of a food or any of its ingredients;
 - (ii) whether a food contains any animal or animal derivative;
 - (iii) the production method employed with respect to any animal or animal derivative contained in the food – adopting standard terminology prescribed by legislation, under the authority of an independent accreditation organisation

(collectively, “**Animal-Related Information**”); and
 - (iv) if a food contains palm oil; and
- (b) impose strong penalties for any breach of a food labelling requirement.

B OUTLINE

In support of our proposal, above, this submission will consider the following:

- (a) the importance of food labels containing Animal-Related Information;
- (b) current problems with Animal-Related Information on food labels;
- (c) Animal-Related Information being prescribed by legislation;
- (d) an independent accreditation organisation authorising the adoption of the Animal-Related Information prescribed by legislation;
- (e) the Ministerial Council’s concerns with respect to food labelling;
- (f) labelling of palm oil; and
- (g) penalties for any breach of a food labelling requirement.

C SUBMISSION

1 The importance of food labels containing Animal-Related Information

Lawyers for Animals submits that it is incumbent upon the Australia and New Zealand Food Regulation Ministerial Council (“**Ministerial Council**”) to mandate that Animal-Related Information is provided on food labels because:

- (a) Australian consumers increasingly desire to make purchasing decisions based on ethical criteria; and
- (b) Australia’s international legal obligations relating to freedom of expression demand that food producers be required to provide Animal-Related Information on food labels.

1.1 *Australian consumers increasingly desire to make purchasing decisions based on ethical criteria*

There is an increasing desire by Australian consumers to make purchasing decisions based on ethical, environmental and health-related criteria. It is also clear that Australian consumers have become more conscious of the animal welfare cost of producing products. With increasing globalisation of manufacturing processes, labour standards have become a global agenda item. In 1996, consumers demonstrated their demand for improved labour standards by boycotting brands such as Nike and Reebok. Similarly, consumers have applied their developing welfare consciousness to food products. For example, the worldwide fair trade campaign, supported by Oxfam, has had particular success in relation to coffee and tea. There is also clear evidence that the food consciousness of consumers extends to the welfare of animals. The rising sale of eggs labelled as 'free-range' and 'barn laid' led Woolworths to announce, in August 2009, that it will increase its stock of non-cage eggs, to meet consumer demand. Eggs labelled 'free-range' and 'barn-laid' currently make up about 31 per cent of all eggs sold in Australia – up from 17 per cent in 2000. However, since around half of all eggs are sold to the food industry, rather than directly to consumers, direct consumer demand for free-range and barn-laid eggs could now be closer to 62 per cent. Consumers are clearly conscious of the impact of their individual purchasing decisions on animal welfare.

1.2 *Australia's international legal obligations relating to freedom of expression demand that food producers be required to provide Animal-Related Information*

Lawyers for Animals considers that Australia is obliged to require its food producers to provide Animal-Related Information in accordance with human rights obligations assumed by the Government. In December 1972, the Federal Government ratified the *International Convention on Civil and Political Rights 1966* (“**ICCPR**”), with a reservation against Article 19, which was subsequently withdrawn in November 1984. The ICCPR forms Schedule 2 of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). Article 19(2) of the ICCPR states:

Everyone shall have the right to freedom of expression; this right shall include **freedom to seek, receive** and impart **information** and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. [emphasis added]

Thus the international community, including Australia, recognises that in modern society, if people are to express themselves freely, not only do they require freedom of speech (in all forms), but an entitlement to receive information on which to base ethical choices. By failing to mandate that Animal-Related Information be provided on food labels, the Government makes it virtually impossible for people to avoid purchasing and/or consuming animal-related products. Lawyers for Animals submits that Australia is currently failing to meet its international legal obligations under the ICCPR by denying the freedom of expression of vegans, vegetarians and numerous others with a desire to avoid particular animal-related foods.

We note that section 3(c) of the *Food Standards Australia New Zealand Act 1991*(Cth) (**FSANZ Act**) specifically describes one of the Act's key objectives as being:

the provision of adequate information relating to food to enable consumers to make informed choices

We submit that at present, laws regulating the labelling of food containing animals and/or animal derivatives run counter to this objective and ought be immediately remedied by Food Standards Australia New Zealand (**FSANZ**), as it is so empowered to do under the FSANZ Act.

2 Current problems with Animal-Related Information on food labels

There are enormous persisting problems in relation to Animal-Related Information on food labels. Without legislated definitions of that information, food production companies flout and misapply the accepted meaning of certain terms or apply seemingly analogous terms to distinctly different things. The effect is alarming: consumers are led to believe that they are making purchasing decisions based on the welfare of animals when in fact the products they are purchasing cannot be so differentiated - meanwhile, those consumers usually pay a premium for their decision.

A prime example of this is in the context of chicken meat. Limnos Poultry Pty Ltd and La Ionica Poultry, for example, describe their chickens as “*Free to Roam*” and “*Free Roaming*”. Consumers are lead to believe that such chickens are free range, when in fact the truth is that those chickens are intensively farmed and regularly afforded less space than the size of an A4 page. In such cramped conditions, the chickens have no ability to ‘*roam*’ nor even to spread their wings. Their living conditions are appalling, and many animals die before they can be harvested. Yet the chicken meat producers endeavour to lead consumers to believe that their chickens are free-range and, for doing so, they charge a premium.

Without legislated definitions for Animal-Related Information, this type of misleading representation will continue. Until Animal-Related Information is required on food labels, food producers that comply with appropriate welfare standards will not be able to take full advantage of their market differentiation.

3 Prescribing Animal-Related Information by legislation

As stated above, Lawyers for Animals submits that food labels must state:

- (a) if any animal was used to test the safety of a food or any of its ingredients;
- (b) whether a food contains any animal or animal derivative; and
- (c) the production method employed with respect to any animal or animal derivative contained in the food – adopting standard terminology prescribed by legislation, under the authority of an independent accreditation organisation.

Each of these submissions will be considered in turn and the proposed labels to be prescribed by legislation, set out.

3.1 *If any animal was used to test the safety of a food or any of its ingredients*

The following label should be provided on each applicable food product:

- (a) Animal-tested

3.2 *Whether the food contains any animal or animal derivative*

One or more of the following labels should be provided on each food product:

- (a) contains meat
- (b) contains animal derivative(s)
- (c) contains NO meat or animal derivative(s)

3.3 *Information on animal production methods*

Set out below are proposed labels which take into account the different production methods employed for each animal and/or their parent (whichever is least advantageous to animal welfare).

Animal	Label for production method 1	Label for production method 2	Label for production method 3
Calf	Free-range with mother	Free-range without mother	Crate confined without mother
Chicken, turkey, duck and other poultry	Free-range	Intensively confined	
Cow (adult)	Free-range	Feedlot confined	
Deer	Free-range farmed	Intensively confined	Hunted from wild
Emu	Free-range farmed	Intensively confined	Hunted from wild
Goat	Free-range farmed	Intensively confined	Hunted from wild
Pig	Free-range	Group housed	Intensively confined
Rabbit	Free-range	Intensively confined	
Sheep	Free-range	Feedlot confined	

Following the relative success of Australia's 'National Standard for Egg Labelling' (March 2001), the adoption of the above terms is likely to be welcomed by consumers and will not cause undue hardship to food producers.

4 An independent accredited organisation authorising the adoption of the Animal-Related Information prescribed by legislation

In addition to these labels being defined by legislation specifically referring to the characteristics of each production method under the relevant Code of Practice, Lawyers for Animals submits that it is also essential that food production companies are not left to determine within which of those categories their food product falls. Rather, an independent accreditation body should be charged with that task to ensure the credibility of labelling.

5 The Ministerial Council's concerns with respect to food labelling

Lawyers for Animals understands from the Terms of Reference that the Ministerial Council is concerned, amongst other things, about the following issues with respect to food labelling:

- (a) that additional food labelling requirements impose costs;
- (b) that it is important that all food labelling laws are evidence based and effective at achieving their policy purpose;
- (c) that food labelling does not impose unjustifiable regulatory burdens on business; and
- (d) that food labelling is capable of being enforced in an effective, proportionate and considered manner.

Lawyers for Animals has worked to ensure that its proposals will not enliven any of the Ministerial Council's concerns. In particular, the legislative descriptions of Animal-Related Information we propose are evidence-based and should achieve their policy objective by means of independent accreditation. Moreover, the regulatory burdens caused by the additional food labelling requirements we propose are likely to be minimal, owing to the very limited words we recommend adding to existing labels.

6 Labelling of palm oil

Since animal welfare concerns relating to the production of palm oil are topical, Lawyers for Animals accords particular attention to it, noting that it might also be viewed as a case study in support of the entire submission.

On 16 July 2008, Food Standards Australia New Zealand (“FSANZ”) formally refused an application made in October 2006, requesting that foods containing palm oil be so labelled [see: http://www.foodstandards.gov.au/_srcfiles/A593_labelling_of_Palm_Oil_Public_Notice_FINAL.pdf]. In support of that application, the Applicant had expressed concern in relation to “*the destruction of rainforests arising from development of new palm plantations and as a consequence, the extinction of animals such as orangutans, in Borneo and Sumatra*”. Despite the apparent inclusion within the then FSANZ Act of an objective mirroring that currently set out in section 3(c) – concerning ‘the provision of adequate information relating to food to enable consumers to make informed choices’ – FSANZ ruled that “*the objectives of the FSANZ Act do not extend to choices about international environmental issues*”. Thus, it declined to require food producers to disclose the presence of palm oil in their products.

Lawyers for Animals submits that FSANZ incorrectly interpreted the FSANZ Act in that decision because the provision of adequate information relating to environmental issues on food labels is highly relevant to a consumer’s ability to make an informed choice. In any event, linked with the environmental issue, there are serious animal welfare concerns in relation to the deforestation of orangutan habitat, and this should have been considered by FSANZ and determined as warranting the labelling of palm oil in food sold to Australian consumers. Lawyers for Animals submits that that fact that the orangutans and the environment affected by most palm oil production are outside of Australia, is of little consequence, since the consumers whose freedom of expression ought be protected by FSANZ, are in Australia. The mere declaration of palm oil as a substance requiring individual listing among the ingredients of food items, would be adequate to protect Australian consumers’ freedom of expression. We urge the Ministerial Council to recommend this step.

7 Penalties for any breach of food labelling requirements

Lawyers for Animals submits that penalties should be imposed for any breach of a food labelling requirement.

At present, we understand that food labelling in Australia is governed by the Australia New Zealand Food Standards Code and that this Code is adopted into local laws by all States and Territories, giving it binding force throughout the Commonwealth. While local laws contain various food-related offences, including that of falsely describing food, this offence is only punishable where the seller either knows or ought reasonably to have known that a consumer who relies on the description will, or is likely to, “*suffer physical harm*”. Since that is unlikely in the case of consumers who are misled or ill-informed in relation to Animal-Related Information, the offence would not apply in such circumstances. As such, Lawyers for Animals urges the Ministerial Council to recommend that legislation be adopted that imposes a penalty on a person or corporation for any breach of a food labelling requirement.

Lawyers for Animals thanks the Council of Australian Governments and the Ministerial Council for the opportunity to provide this submission.

We would be pleased to assist you in any way to implement any of our proposed recommendations. If you would like to discuss any of the above, please email Nichola Donovan, President, at nichola@lawyersforanimals.org.au or Leana Papaelia, Executive Member, at leana@lawyersforanimals.org.au.

Yours faithfully,

Nichola Donovan

President

LAWYERS FOR ANIMALS INC.