

## 7 ENFORCEMENT STAKEHOLDERS

In Australia, the inspection and enforcement of food labelling was undertaken by either or both local councils and state health authorities, depending on the jurisdiction. In New Zealand, responsibility for food labelling was undertaken by the Public Health Officers located within local councils, but employed by the Ministry of Health. Therefore to uncover the range of perspectives and issues faced by those with responsibility for monitoring and enforcing the new Code, focus groups were conducted with local council environmental health officers (EHOs) and in-depth interviews were conducted with state health authority Senior Food Officers in Australia (SFOs), and Ministry of Health officials and public health officers (PHOs) in New Zealand.

Generally speaking, the attitudes and experiences of these stakeholders were consistent between Australia and New Zealand and the findings summarised in this section reflect this consistency. However where notable differences between countries did arise, they are reported separately.

### 7.1. Overall awareness of ANZFA, the Joint Food Standards Code and Labelling

In order to assess the degree of awareness and understanding of changes, prior to the influence of the general discussion, participating EHOs completed an individual written task sheet that asked about their awareness of ANZFA and label changes.

In Australia, all but one of the EHOs were aware of ANZFA and all were aware that there had been recent changes to the Food Standards Code. Perhaps not surprisingly, the most frequently mentioned changes to the Food Standards Code (over all labelling mentions) were food safety and hygiene issues. Their knowledge of the labelling changes was very low, with less than a quarter of all participating EHOs being able to recall each of the label changes prior to the group discussion. As well, not all were aware that the transition date was December 2002. The main label changes that participating EHOs knew of are listed in order of awareness below:

1. NIPs
2. Date marking
3. That the new Code is less prescriptive / more technical
4. Percentage labelling
5. GM labelling

Even amongst those who could recall what labelling changes were taking place, their knowledge and understanding of the detail around those changes was minimal. The few participants who were very well informed about the transition had been involved in the ANZFA consultation process and had commented on drafts for the new food standards code over a number of years.

The low awareness and salience of food labelling issues amongst EHOs is discussed in further detail throughout this section of the report. However these findings were not consistent with New Zealand, where the PHOs who participated in the research were aware of most aspects of the changes and their implications.

As one would expect, the SFOs and MOH officials interviewed all had a detailed awareness and good understanding of each of the labelling changes and most had informed opinions regarding the implications of these changes.

## 7.2. Use of the new Code in an Enforcement Role

Typically the EHOs (Aust.) and PHOs (NZ) who participated in the research spend 60-80% of their time on food-related issues, and of that between 10% and 5% (or less) was spent on food labelling issues. The bulk of their time on food issues was spent on food safety, food handling and hygiene. Attention to food related issues, and therefore food labelling would also depend on the size of an office and its personnel resources. In a very small office, as low as 20% of the time could be devoted to food related issues.

It should also be noted that EHOs and PHOs who rarely or never advised businesses about food labels were excluded from the study. As well, several participants (both in Australia and NZ) commented that certain (unnamed) local councils are 'slack' in terms of inspection and enforcement, whilst others are more stringent. The proportion of time spent on food-related issues across all EHOs and PHOs would therefore be much less than those involved in this study.

At present, EHOs and PHOs mostly respond to complaints from the public and food industry competitors about labelling rather than pro-actively check local manufacturers' labels to ensure compliance. Most do, as a matter of normal practice, give advice to manufacturers about the requirements, particularly in regard to food handling and safety issues, however labelling issues come up less often.

The council (CEO) usually sets the priorities in terms of the allocation of resources. Within that allocation, the overall environmental/public health work plan and priorities are set by the most senior officer, or by staff teams, which are largely self-managing. In New Zealand, priorities are set in consultation with the Ministry of Health which contracts their services.

### 7.3. Relative Importance and Priority of Food Labelling Issues

**The most important food enforcement issues were felt to be those relating to food safety and public health, especially food borne illnesses.**

*‘First we have to ensure there are no dead bodies or sick people.’*

*“Generally, ensuring the food supply is safe is more important [than] ensuring food is labelled correctly.”*

Enforcement of most labelling standards was considered to be a low priority particularly those aspects which were viewed as consumer information or fair-trading issues (e.g. NIPs, percentage labelling) rather than food safety issues. Consequently, of all food labelling issues, allergen labelling, date marks and ingredient lists would assume highest priority (keeping in mind the low priority of labelling overall) as well as country of origin labelling when it is relevant to one of these labelling issues.

Diligence to labelling enforcement depends on, like other food safety issues, an individual officer’s interest in and motivation towards a particular issue, making some EHOs and PHOs more pro-active than others. The ‘political will’ in a council was also said to influence how pro-active an officer might be in enforcing compliance, depending on the degree of support to prosecute a breach of compliance, and the likelihood of success in the courts. Support for the prosecution of food labelling non-compliance would take a very low priority compared to food safety breaches.

It was felt that food labelling queries would increase during the year and into next year until the new Code beds down and that there will probably be increased complaints about food labelling non compliance for several reasons:

- the new Code will cover more aspects than the current regulations so there will be more room for non-compliance;
- the public will be more aware of the issues and therefore will be more likely to complain; and
- manufacturers will have additional aspects to complain about regarding their competitors.

## 7.4. Awareness of Specific Food Labels and Implications for Enforcement

After ascertaining the level of individual awareness of the labelling changes, the moderator provided participants with a summary of the changes (based on the ANZFA Guides) and the understanding, usefulness and anticipated implications of each change was then discussed in detail.

### **Allergen Labelling**

Some participants had a general awareness that the new Code made changes to the information for allergy sufferers but they were not aware of the three levels of advice, or the full range of allergens now included. Once EHOs/PHOs had read the changes to the new code they felt it generally made sense and was understandable. Of all of the new labelling initiatives, allergen labelling was regarded as being most relevant to their work, as there was a directed associated risk with public health and safety.

Several officers mentioned that, while it seemed clear at face value, they liked to have examples of actual labels to confirm their understanding. There was some concern as to whether trace elements of these main foods will be declared and, if not, what quantities need to be present before a declaration is mandatory. However, it was pointed out that comprehensive ingredients listing should assist in overcoming this.

There was also no common understanding as to what situations would require information to be declared (e.g. will a restaurant menu where shellfish is an ingredient in a meal be required to have a warning statement? What is the case for a café or supermarket?). These were very real issues for officers working in the field.

### **Date Marking**

The changes to date marking requirements were felt to be clear and straightforward. The changes were already having a much greater impact in New Zealand than Australia because many NZ manufacturers produce products that have not been required to be date marked previously. However now that all products with a shelf life of up to two years will need to be date marked, PHOs reported that there have been a lot of queries from these manufacturers who are new to date marking. In addition, it was felt that a definition of “health and safety reasons” is needed for EHOs and PHOs to advise retailers on this aspect.

The process for enforcement was also unclear for most. As one officer said:

*“if in January 2003 we receive a complaint about a retailer selling a food past its ‘use by’ date at this stage I do not know what action I am required to take. Where do I find the enforcement provisions for this standard?”*

### **Ingredient Lists**

Some EHOs and PHOs knew about the labelling change regarding water. Generally, it was felt to be clear and made sense, although the concern of several officers was aptly represented by one officer who said *“my instinct tells me it won’t be as simple as it seems.”*

As with health professionals, enforcement officers were unsure whether the standard referred only to added water or to total water (i.e. water as a naturally occurring part of an ingredient plus added water). From an enforcement perspective, it was felt that it would be difficult to ascertain if water was a principal ingredient or a percentage ingredient, and that manufacturers' recipes would have to be relied upon. From a consumer perspective it was thought to be useful, as the consumer will be able to see the proportion of the products relative to the proportion of water. Bacon, tinned tomatoes, and coconut milk were given as examples of products where this information should be particularly useful for consumers. However most officers felt this change would make no difference to their advice role.

### **NIP**

The mandatory inclusion of an NIP was regarded as helpful for some consumers (those who read labels) but not seen to be particularly relevant to the work of an EHO/PHO. The biggest implication of the introduction of this requirement was considered to impact on small manufacturers, whom EHOs felt would struggle to find the resources (time, money and ability) to comply.

Very few EHOs knew of the ANZFA Nutrition Panel Calculator. Upon learning of its availability and use, most felt that the calculator would be very helpful for small manufacturers, and that they would recommend it in the future. However, PHOs in were less positive about the applicability of the calculator in New Zealand, reiterating the views of NZ dietitians and nutritionists reported earlier:

*“ANZFA has got a calculator. I was told by nutritionists that it had scathing reviews. It has not got New Zealand data in it yet and we may not want to put New Zealand data in. It depends on the efficacy.”*

### **Percentage Labelling**

Relative to all other labelling additions, quite a few EHOs and PHOs were aware of the percentage labelling requirement. There was considerable disagreement as to the usefulness of this label, for consumers, and the practicality of it for manufacturers.

*“Are the percentages for ingoing weights or weights at the end? People in industry have concerns about this standard. It is going to cost a lot to provide this extra information and how many consumers really want to know this. It will push the cost of products up as the costs are passed on to the consumers.”*

Enforcement officers views reflected the concerns of health professionals and the food industry regarding the subjectivity in interpreting the characterising ingredient.

*“It will be difficult to interpret this. We might say to a bacon and egg pie manufacturer, you need to provide the percentage of bacon and the percentage of egg in your pie. We probably won’t take a case until we get a complaint and if it involves misleading the public we will pass it on to Commerce and they will set the case law.”*

There was also considerable concern about advice for compliance and processes for enforcement. These aspects were seen as being additional work for EHOs and PHOs and yet they were not regarded as being health or safety matters. One very frank comment summed up the general feeling:

*“These are inherently potential fraud and deception issues. Should we care about this in a health jurisdiction when there are no bodies resulting?”*

Enforcement officers were also concerned that the percentage labelling requirement provided the scope for increased complaints from competitors in the food industry:

*“We have a number of small confectionery manufacturers and the big companies take it in turns to complain about their products so I expect there will be complaints about their percentage labelling. Being a new area this presents a new opportunity for them to complain about their small competitors.”*

### **GM Labelling**

Participants had no problem interpreting the GM standard, but they were less confident as to how they would advise on this standard or enforce it. The lack of consistency with international GM standards was seen to be particularly problematic for compliance by imported products.

*"I haven't worked out how we as a regulator and receiver of a complaint would ever be able to verify if an ingredient was GM or not. I don't feel we could enforce the law at this stage. I have no idea how we would progress an examination of GM material so I would contact ANZFA on this."*

*"What do we do if we get a complaint about fruit and vegetables. Does the law only apply to packaged food?"*

*"How will we identify products from overseas with GM material in them? Will we have to test them or is there a global list we can use?"*

### **Imported Foods**

The general view amongst enforcement officers in Australia was that there already exists a substantial proportion of non-compliant products in the market place, and that, as a result of further labelling requirements (that were largely not public health related) this situation was likely to increase.

The AQIS participants in the research confirmed that only a minority of products (between 10% and 5% of non-risk foods) are inspected at customs. Here, again the priority was to pick up products at risk to public health rather than those not compliant with other labelling requirements.

*"Basically what we look for is the [name of] manufacturer, the country of origin, the weights and measures, in English, the lot code, use by date and things like that. If all of that's there we haven't been worrying too much about it [nutrition labelling] in the past ...but now we're going to have all these other things thrown at us. I can see products being on halt all over the country."*

*"I think it's going to continue on exactly the same. As probably everybody here is under-resourced we just haven't got the resources to up that ...we've been told there's a nutrition panel and we know that there are changes that we're going to have to enforce but at the moment we've got other priorities. We're trying to chase our tail in other areas but when it happens we'll have to make it a priority to check for those things...but as I say, if you look at 10% that means that 90% are not [looked at]. You look at 5% that means 95% are not. It's very difficult".*

The lack of education of importers about the food labelling changes was also seen to be a significant issue. Cultural and language issues were seen to be barriers here, but by far the biggest barrier was the lack of resources for education. As one senior EHO explained:

*“Part of the role is education, but that’s a luxury. Education is a luxury if you’ve got the time.”*

## 7.5. Level of Preparedness and Information Sources

Whilst most EHOs and PHOs did not have a detailed awareness of the new food labelling legislation, they expected that as they begin to encounter various aspects of the legislation in their day-to-day work, their expertise will grow. At present, most did not feel very well prepared for the adoption of the new Code, largely for workload reasons. For many, the labelling changes were something that they knew were pending, and that they would ‘get to’ at some stage.

### **ANZFA Information Resources**

In Australia, the path for accessing information about the new Code and food labelling depended on the legislated and practical relationship between councils and the state departments of health.

Most, but not all, officers said that they had a copy of the old Code (NZ food regulations) and new Code at work. Almost all were aware of the ANZFA website and had used it from time to time – with mixed success! The resources available on the website were regarded as excellent materials for industry (particularly the user guides, the Nutrition Panel Calculator and the yogurt labelling poster) but it was pointed out that many small manufacturers do not have access to the internet.

Amongst enforcement officers participating in the research, awareness and use of the ANZFA user guides and fact sheets was divided. Some used them as a reference point on a regular basis, but most had given them either a cursory glance, or did not know about them at all.

It was pointed out that the strawberry yoghurt poster on the ANZFA website (which was regarded as an excellent poster) does not print out in its entirety (only the middle section will print) and this was very frustrating. There were also requests for posters for other industries (apart from yogurt) – *“An ANZFA poster for other industries is needed. For instance, why can’t there be one for the juice industry, the corned beef industry and the bakery industry? Posters by food commodity are needed”*.

### ***Training***

EHOs and PHOs had received little, if any training covering the new Code and many said that they would welcome workshops where specific aspects could be examined in detail with examples and case studies used to aid understanding. It was suggested that ANZFA should develop a standard workshop for all locations, to make sure that all manufacturers, all councils, and all health departments are receiving the same information in the same way.

## **7.6. Preparing Industry for Transition**

Most agreed that large manufacturers and large retailers were further along the road to compliance than small manufacturers and retailers mainly because the large companies had the resources to employ to advise them on becoming compliant, while small manufacturers, particularly very small manufacturers had neither the time nor the resources to attend to these issues.

Some of the officers had already begun the process of talking to their local manufacturers and retailers about the labelling changes, whereas others (the majority) were aware in theory, but had not yet given consideration to the detail of the new Code, nor to the practicalities of implementation, because they had not had to use it. It was generally thought that once the changes had been confirmed and details had been received by EHOs they would visit each of their manufacturers and tell them about the impending changes. However, given the repeated comments about workload and the general low priority for education against all other priorities, the likelihood of such a strategy being implemented is questionable.

### ***Suggestions for Education***

One PHO had developed a checklist which was used in a free assessment of labels received from manufacturers to see if they complied. EHOs in Australia also felt that the development of a checklist resource for inspections would be a very useful tool for them. However others regarded such assessment as being beyond their responsibility and they referred manufacturers to consultants for such a service at the outset.

A kit for the dissemination of information (ie targeted packages for specific groups such as manufacturers) was also a popular suggestion. This would cover the requirements for specific manufacturers to tell them exactly what they need to know. The level of information provided for EHOs (in ANZFA brochures) was considered to be too detailed for use by manufacturers, and there was a need a simplified version for different applications. Education videos were also suggested as useful training tools for industry, particularly those with low levels of English language proficiency.

## 7.7. Benefits and Implications of the New Code

Like other industry stakeholders, enforcement officers felt that the main benefits of the labelling changes were for consumers.

One or two thought the new Code will make the job of assessment harder - that it might be resource hungry in administration, taking more council resources to administer. Others thought the changes made the new Code more logical, and therefore easier to administer. However overall it was thought that there would be little change in terms of whether it makes things any easier or harder. Some thought manufacturers could be difficult and might complain but that they would come around in the end.

Despite all of the new labelling requirements, which presumably require monitoring and enforcement, most enforcement officers in the end agreed that very little would change in terms of their focus and priority for enforcement. The likely consequence was that more would be missed, unless vigilant consumers and competitive manufacturers made complaints to which they would be required to respond.

## 7.8. Health Authority Perspectives (Australian Senior Food Officers)

Each of the eight state and territory Senior Food Officers were interviewed in order to obtain a comprehensive understanding of issues faced by state health authorities as well as local councils. These officers shared most of the same views and issues as EHOs and PHOs, and these findings are summarised in this section. However it should also be noted that there were many issues raised that were pertinent to specific states/territories, and there was much diversity between states in terms of what departments have done to prepare for transition from the old to the new Code. These specific details cannot be reported without identifying participants, are therefore not included in the report.

### 7.8.1. Relative Importance of Labelling and Enforcement of the new Code

As with EHOs and PHOs labelling is said to be less important than the safety and hygiene aspects of the new Code, but this was qualified by the potential for serious harm that can be associated with incorrect or inadequate labelling. Therefore public safety issues are of most importance regardless of whether they come from breaches in food handling or labelling.

Nonetheless, when the new Code is implemented, enforcement of the issues that have most likelihood to translate to health and safety issues will take higher priority than other things. Resources will, as always, be allocated on a risk assessment basis, unless other factors, such as 'politics' influences this. In all likelihood, different labelling issues will carry different priorities in different states depending on what the political 'hot topics' were at any given point in time.

All departments indicated that they operate primarily on a reactive rather than proactive basis, that is, they investigate labelling issues only when they have received a specific query from a consumer or manufacturer.

Apart from one jurisdiction, no additional resources have been put in place to deal with the implementation of the new Code – neither do they have any staff dedicated solely to this matter. All staff are required to be 'across' labelling issues and deal with issues as and when they arise. It was thought that, in the short term, there might be considerable increased contact with consumers as they become aware of the changes and begin to check the labels encountered and then make complaints.

Larger states have already received a lot of inquiries from manufacturers, many of whom wish to use the health authorities on a consultancy basis, sending in labels for approval or advice. This demand is putting strain on departmental resources most of whom are not willing (or able) to undertake consultancy services. A department's response generally involved sending the manufacturer labelling information, then referring them to ANZFA materials and the ANZFA helpline.

There was some acknowledgment of the fact that the new Code in general is more flexible than the old regulations and is therefore open to interpretation, with the result that there may be a lack of uniformity or standardisation in some areas. However there is a feeling that that is an inevitable trade-off.

The labelling requirements generally regarded as being most problematic for implementation and enforcement were percentage labelling, the NIP and GM labelling, as checking these will require chemical analysis and detailed audits. Many expected a lot of consumer confusion over percentage labelling at the start as percentages can easily be misinterpreted or distorted by consumers. Some states indicated categorically that they will not enforce this standard because they cannot interpret it. GM foods, which allegedly have no health implications, were expected to require massive surveillance resources should public pressure be brought to bear. Country of origin labelling was also a source of confusion, particularly over the difference between Made in Australia versus Product of Australia statements.

## 7.8.2. Level of Preparedness

The SFOs liaise with ANZFA on a regular basis, and hence are very familiar with what information and resources are available and what they are required to do. All felt that they had essentially received sufficient information to ensure they are cognisant of the changes and requirements. In addition, SFOs obtain and pass along information through contacts in the industry and via industry committees. The Senior Food Officer's Group was described by some as particularly helpful.

Smaller states also described ANZFA as having been "*very supportive*" and the other and better-prepared States (eg Qld, Vic and NSW) have been "*very sharing*" of their resources and supplementary information.

As far as their perceptions about industry preparedness, it was believed that "*the big end of town*" was already well-prepared, but the small and medium manufacturers, even though they are probably aware that some change is to happen, have not yet got around to making sure they're compliant. It was felt that they are probably either in denial, or delaying implementation for financial reasons. This is consistent with information from other related sectors.

A further concern was raised about the impact of the labelling changes on cottage industries / charitable groups. Mentioned were such things as jam-makers for markets who would now have to provide NIPs and the Asian Style markets which often sell chilli sauces or the like for which the contents vary from time to time, and cake stalls.

Many SFO's raised the anticipated issue of lack of readiness (by small manufacturers and producers) in the context of a need to extend the transition period, or provide a 'period of grace' to allow manufacturers to run out stock in trade.

One further point made by many States was that food labelling changes have come right on the heels of significant food safety reform (implemented at States' discretion from May 2001), resulting in a great deal of change that enforcement bodies and food industry stakeholders have had to accommodate, and costs that have been incurred as a result.

### 7.8.3. Information dissemination and industry training

Departments take an active role in dissemination of information and they mainly do this through site visits (through EHOs) and seminars.

States were at different stages with regards to the dissemination of information and training for enforcement officers (their own and council EHOs) and food manufacturers, retailers and food service establishments. Some were embarking on industry 'road shows' however larger states did not feel they were sufficiently resourced to undertake this type of training. Other departments taking responsibility for EHO training were phasing this in over time. Until the new Code became enforceable, training could only be theoretical and it was felt that EHOs would benefit when they could interpret and practise the new Code in the practical sense.

Some departments were preparing their own information leaflets and summary sheets for special industry groups such as cottage industries and Asian marketeers to facilitate the dissemination of information to those who would need it. Others were preparing a more generic 'minimum labelling standards' style information leaflet that could be used in field visits or for information requests from industry.

The Nutrition Panel Calculator was viewed very positively by SFOs. Most regarded it as an innovative approach which would be very helpful to small producers and manufacturers. SFOs and their staff were referring businesses both to the calculator, and to the ANZFA website or helpline as their first 'port of call'.

## 8 THE NEED FOR CONSUMER EDUCATION

In each component of the stakeholder research, the need for consumer education was confirmed, with questioning who or what organisation would take responsibility for this. The endorsement of a need for a coordinated consumer education strategy was evident amongst health professionals, food industry members and enforcement officers, but was strongest amongst health professionals and the food industry.

It was argued that there was little point implementing such significant labelling changes, most of which it was felt were introduced for the benefit of the consumer, and then to not tell the public what has changed, or how to utilise the benefits of the changes. Whilst informing consumers of the changes was regarded by all as the highest priority for education, it was also argued that the changes provided a unique window of opportunity to broaden consumers' knowledge and skills on how to use the new nutrition labels.

As well, food industry and enforcement stakeholders in this research believed that consumers need to be given clear information about where to direct complaints and inquiries. Manufacturers in particular did not feel that they should have to respond to consumer inquiries (such as whether a product 'recipe' has changed with the apparent addition of an ingredient that previously did not need to be declared or the addition or omission of certain nutrients in the NIP in accordance with the new NIP standards) which have originated as a result of changes in the new Code rather than their own product development or label/marketing initiatives. It was felt that a well-orchestrated consumer education campaign could prevent many of the inquiries, and possibly complaints that they envisage receiving.

There was no agreement on who or what was the most appropriate body to undertake a consumer education campaign, but many speculated that this was an important link in the process of implementing new food legislation and should not be overlooked. There was considerable concern and cynicism, however, that an education strategy would likely fall through the cracks of federal, state, local and non-government jurisdiction and remain unaddressed, speculating that each area would probably absolve themselves of responsibility for education.

A consistent view amongst all stakeholder sectors was that education delivery could be provided by a number of, if not all, stakeholder groups, however it needed to be coordinated and funded at the federal level to ensure continuity, as well as to ensure that it happened! The conclusion in most of the stakeholder discussions was that ANZFA should assume responsibility at least for coordinating consumer education, if not for delivering it as well.

Dietitians and nutritionists who participated in the research felt that their professional bodies (DAA and NZDA) should play a pivotal role in the development or contribution to the content and nature of any consumer education strategy, and for any such strategy to retain credibility amongst this stakeholder group these bodies must be consulted. However, given ANZFA's cooperative relationship with DAA and NZDA to date, participants did not envisage this being problematic. Participants in this stakeholder group stressed however that dietitians and nutritionists should not be relied upon to deliver the communication strategy as they see such a small and skewed proportion of the general community.

Whilst eventually, most stakeholder participants felt that responsibility for education should rest probably with ANZFA, at least for a short information campaign, a few participants in the stakeholder groups thought that ANZFA's responsibility is to develop good food legislation and this takes considerable funding for research and development. Consumer education initiatives should therefore be well tested, targeted and strategically implemented so that ANZFA was not seen to be wasting funds that could be spent elsewhere. Importers and retailers who sell large quantities of imported foods would also benefit from a specific education strategy to assist them in understanding the requirements of the new Code and helping them to be compliant. Such a strategy would be best delivered by EHOs as part of their routine inspection visits, however as many EHOs already battle language barriers in their existing inspection work, labelling education materials would need to be customised by language to overcome these barriers. Education information would need to focus not just on labelling requirements but on the responsibility of the retailer when ordering or accepting deliveries of non-compliant products.

Those working in public health policy roles also raised issues of equity of access to information and education amongst minority groups such as low socio-economic status, non-English speaking, and Indigenous groups. It was argued that these groups of consumers often lack skills or face barriers to accessing information available to mainstream consumers and that any community education strategy should consider the needs of these disadvantaged groups.