

Review of National Trade Measurement Regulations 2009 - Submission to Department of Industry, Innovation and Science

BACKGROUND

Consumers Federation of Australia (CFA)

The CFA is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership based organisations, organisations that provide information, advice, counselling or assistance to consumers and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at <http://consumersfederation.org.au/members/cfa-organisational-members/>.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

Contact Person: John Furbank, CFA Representative NMI Consumer and Industry Liaison Committee email: johnfurbank@internode.on.net

CFA appreciates the opportunity to comment on this options paper.

This submission is supported by the Consumers Association of South Australia.

RECOMMENDATIONS

1. CFA supports Option 1 – The status quo should remain providing specific requirements on where and how the measurement marking must be displayed on packed products. CFA accepts there is justification in rewriting some clauses in the interest of clarity and opportunity should be taken to make changes to spell out the provisions.
2. It is recommended that further market research into consumer reaction presented in an impact statement.

GENERAL COMMENTS

Legislation

Consumers have been protected by legislation controlling the way pre-packed food and other goods are labelled nearly for 50 years.¹ This legislation has evolved since 1967 with

¹ Packages Act, 1967 No. 67 of 1967 [Assented to 16 November 1967]

clauses and sections added but certain elements, namely the quantity statement on the main display panel and the font size for the measurement marking, have remained consistent. This has enabled established consumers to familiarise themselves with the consistent labelling and new consumers (young persons, immigrants) to quickly learn where to look for the quantity statement.

Although the legislation could be clarified by rewriting and made simpler to use for both consumers and industry, the general principles behind Part 4 work well. Consumers are protected and informed and small manufacturers, packers and retailers are provided with a level playing field in which to conduct business.

Shrinkage

Evidence suggests that instead of increasing the price per pack, some manufacturers, with a view to maintaining the price, use the same or similar size carton or bottle while reducing the contents and hiding the quantity on the back panel. In Europe, the quantity statement may be on the front or elsewhere on the pack. The UK Guardian newspaper recently reported² that European port officials have warned the British Government that with the devaluing of Pound Sterling exporters to the UK have been quietly shrinking the size of products such as chocolate bars and fruit juices since the Brexit vote but not reducing the prices charged to British consumers in the shops. Examples included orange juice in bottles of 950ml instead of 1L and decreasing the amount of chocolate in chocolate bars. Currently Australian consumers can clearly see the quantity and compare quantities. Clear front of the pack quantity statements would enable consumers to note reductions and compare packages.

Influence of Unit Pricing

Unit pricing is useful tool in providing price relative to quantity information to the consumer. However it is only available in stores of a certain size and is not mandatory and not provided voluntarily by many small grocery stores, pharmacies, bottle shops etc. Where the unit price is shown, in many stores, particularly on the lower shelves, the unit price is not prominent or readily visible to the consumer. For these reasons, the requirement to provide a unit price in some circumstances does not diminish the need for clear front of pack labelling.

Market Research

CFA is concerned that the evidence currently produced to support the lack of interest by consumers in principal panel quantity labelling is insufficient or flawed. It would be better to ask consumers directly whether they prefer to see the quantity statement on the front panel or in different places including the back of a package.

When consumers were given a choice between different information, 10 per cent of respondents indicated the measurement mark was the most useful of eight different types of information that could be placed front of pack. However, this result would have been affected by other factors such as the promotion of, and publicity about, the other information at the time of the survey. There has been very little promotion regarding the quantity statement compared with for example Country of Origin labelling, Health Star Rating, or sugar content.

² Guardian 2 June 2017

In any event, taking the Options Paper's figure of 8.8 million as an estimation of the number of shoppers in Australia, and the survey's finding that 10% of consumers preferred to quantity statement on the front panel, it may be extrapolated that the 10% group represents 880,000 shoppers—no small number.

Balance between industry and consumer interests The Options Paper states 'The purpose of the NTMR 2009 is to correct an information asymmetry, striking a balance between consumer protections and business confidence at least cost'. CFA believes option 3 and, in relation to cosmetics, option 2 does not strike a balance as it provides more freedom to industry at the expense of consumers.

Compliance and industry costs

It is arguable that with less clarity and detail in the regulation, compliance monitoring and enforcement costs for government will actually increase rather than remain neutral as suggested in the Options Paper. Currently Australian industry, particularly small businesses, benefit from certainty that their placement and size of the quantity statement complies with the law. With the uncertainty of what is 'visible' or 'prominent' non-compliance is likely to increase and there will be greater difficulty in successfully proving non-compliance.

COMMENTS ON OPTIONS

Option 1 -supported

CFA supports Option 1. While CFA accepts there is justification in rewriting some clauses in the interest of clarity, because of the consumer protection Part 4 currently provides, CFA considers Option 1 to be the best option of those offered in the Options Paper.

Provision of information

The provision of adequate information to consumers is enshrined in a United Nations charter. Australia is a member of the UN. The General Principles of United Nations guidelines for consumer protection (as expanded in 1999) state Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines and relevant international agreements. The Guidelines include 'Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs'.³

In Australia the Harper Review of Competition Policy⁴ acknowledged the contribution consumer information added to competition in the market place. The Harper Review recommended: '*Governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice*' and, '*...governments, both in their own dealings with consumers and in any regulation of the information that businesses must provide to consumers, should draw on lessons from behavioural economics to present information and choices in ways that allow consumers to access, assess and act on them.*'

³ http://www.un.org/esa/sustdev/publications/consumption_en.pdf

⁴ Harper Review 2015 <http://competitionpolicyreview.gov.au/final-report/>

Key elements of legal metrology legislation involve the provision of information to consumers. CFA supports the continuation of current regulations designed to ensure that consumers have access to consistent, comparable information including the price per unit of measurement, and, where and how legal metrology information is provided on package labels.

For example:

- Requiring the provision of the price per kilogram on random measure packages of products such as meat, fish, and cheese ensures retailers provide value comparison information for consumers in a consistent and legible format. These requirements greatly enhance price transparency and price comparison by consumers.
- Specifying the position, set out, form, and minimum character size for the display of 'measurement markings' on pre-packaged products is designed to ensure that consumers are provided with consistent, easily accessible, noticeable and legible information about the quantity of product in packages. In a 2014 national survey undertaken for Choice⁵ 74% of over 3,000 consumers said it was 'very' or 'somewhat important' that the quantity information be shown on the front of the pack.

International Agreements

The current legislation is supported by Australia's international agreement with the OIML. OIML document R79 - Labelling Requirements for Pre-Packages recommends that the measurement mark be on the front of the pack and be prominent and legible.

Option 2 – not supported

Option 2 currently preferred by some industries including the cosmetic industry removes many of the regulations that control the size, orientation and position of the quantity statement. Cosmetics include skin creams, shampoos and make up purchased within the a consumers normal weekly shop.

The most significant aspect of the proposed change is that it would allow industry to move the quantity statement from the front of the package and rely on requirements stating that the statement must be 'legible' and 'prominent' instead. This means that the packer chooses the size of print and where the quantity statement is positioned.

The Cosmetic industry has been arguing for many years to remove the positioning requirement on pre-packed cosmetics citing cost. While there may be some cost benefits for industry there appears to be little consideration of the public good. Under Options 2 and 3 consumers would have to turn the package around and search for the quantity. It is important that consumers are able to easily compare the quantity of different products. There is no evidence that any cost savings would be passed on to the consumer.

⁵ www.choice.com.au/about-us/media-releases/2014/september/choice-unwraps-industry-push-to-hide-shrinking-packs

The Options Paper puts the cost of relabelling products between \$2.3m to \$33m and between 8 million and 47 million products relabelled. It is arguable that these figures are too wide to provide good evidence. In any event, in the case of cosmetics, given the millions of dollars this industry spends on promotions, innovative packaging and providing advice and free samples at store level it is suggested the cost of relabelling is minimal by comparison. It is not beyond reasonable imagination to conclude that another reason behind the Cosmetic industries' campaign is that it allows more scope to hide the true quantity behind innovative package designs.

CFA is also concerned that once one particular industry is allowed to enjoy relaxed labelling provisions other industries will start scrambling to also be allowed the relaxation.

Option 3 – not supported

Principles-based approach to regulation

Option 3, involving a principles-based approach, is favoured by the Department and some industries. CFA recognises that a principles-based approach has some benefits and supports a focus on outcomes. However, it is essential that in relation to consumer and competition policy objectives, any principles-based regulatory framework results in high levels of consumer protection and information.

CFA considers that to achieve policy objectives such as consumer protection, information provision, and stimulating competition, much detailed specific regulation will be required even within a principle-based regulatory framework. For example, the character size in quantity displays and accuracy tolerances on measuring instruments.

There are major benefits from having well designed, clear, specific requirements in legal metrology which provide for effective compliance monitoring and enforcement. Clear and specific requirements offer businesses, particularly small businesses, with easily transferable information that may be passed on to label and package producers and provide confidence that they are complying with the law.

Information that is inconsistent between providers or difficult to locate, notice, read or understand greatly reduces consumer confidence and engagement and increases consumer costs. The *Trade Practices (Industry Codes Unit Pricing) Regulations 2009* use of broad terminology in its requirements to display unit price has resulted in a variation in the consistency, location and visibility of the unit price to the extent that the unit price is unreadable in some locations.

Currently Part 4 requires eggs to be marked by number and mass and, where referred to individually, places limits on marking by reference to individual eggs. Option 3 proposes to repeal the regulation and allow industry to self-regulate. CFA believe that self regulation of package labelling is not in the interests of consumers in any industry. Given the debate inside the egg industry over what constitutes free range and the huge economic advantage large egg producers have over their smaller competitors it is unlikely that self-regulation would work either for consumers or small producers.

Estimated net benefit

CFA notes that the annual net benefit estimated for this option is only \$3.6 million. Ignoring CFA's concerns about how this figure was estimated, and about the underestimation of many costs, CFA considers that this net benefit is insignificant relative to the multi-billion dollar annual cost of packaged products to consumers, to the millions of consumers that will be adversely affected , and to the risks associated with this option.