

Submission

by

NARGON
(National Association of Retail Grocers of NZ)

to the

Health Committee

on the

Public Health Bill

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1. Introduction

The National Association of Retail Grocers (NARGON) welcomes the opportunity to present a submission on the Public Health Bill (the Bill).

NARGON represents the interests of approximately 40% of the food retailing industry in New Zealand. The approximately 550 retail members of NARGON are owner-operators of retail food warehouses, supermarkets and grocery/convenience stores. In the main, retail members of NARGON are aligned to a banner/advertising group of stores such as Pak 'N Save, New World, Write Price, Four Square, Supervalu, or Fresh Choice. Many of NARGON's retail members are the owners of smaller stores.

NARGON also has a number of associate members who are major suppliers of products and services to the retail members of NARGON.

NARGON supports the aim of the Bill, however we have some concerns. While the Bill covers a variety of issues, NARGON only wishes to concentrate on certain areas of the Bill that have the potential for the strongest effect not only on grocery retailers, but on the way in which regulatory practices are carried out.

We note however that there is no reference in the Bill to public health education, both in regards to communicable and non-communicable diseases. Education is an effective means of addressing the risks of many non-communicable diseases and indeed the risks of some communicable diseases and should not be omitted.

2. Discussion

NARGON has particular interest in Part 3 of the Bill.

Clause 81

- This is an extremely wide-ranging power for the Director-General. Essentially, he/she can issue a code or guideline on almost anything.
- The issuing of these codes and guidelines, on face value, seems to be pitched at the self-regulatory aspect of regulatory practices. However, it is confusing for the public to understand where these will fit with existing voluntary guidelines. For instance, during the same time the Bill was introduced before Parliament, the Government released their response to the Inquiry into Obesity and Type 2 Diabetes. Part of the Government response proposed the food industry to work with the Ministry of Health and Ministerial Committee to develop specific processes and outcome targets, and generally supported the current self-regulatory approach. The Bill takes a very different approach, where the Ministry of Health imposes codes on the industry with the power to regulate as the Ministry sees fit. It is simply confusing to have differing regulatory outcomes in the same sector, which at a practical level will not work.

- As the Bill currently stands, it is unclear whether the codes of practice proposed by the Director General will be self-regulatory codes, or co-regulatory codes.
- If the codes of practice as outlined in the Bill fall under a self-regulatory approach, then they should be owned and developed by the sector, not by the Director-General.
- A co-regulatory approach should still see codes of practice owned and operated by the sector, with the Director-General involved as an important stakeholder. With either situation, the current model is flawed, as it does not fit with standard regulatory model options.
- The preferred approach would be to ensure that any matters that require codes of practice to be established should first be taken up with the relevant sector, which in turn would conduct an independent review as typically experienced with a self-regulatory code.
- There appears to be no framework regarding why or how the decision to issue a code of practice or guideline is made by the Director-General. Even if there is an area where “market failure” has been identified there appears to be no processes required for ascertaining whether imposed solutions are justified.
- There is no reference as to requirements in respect of monitoring, enforcement, complaint mechanisms, funding and dissemination of information about the code.

Clause 82

- NARGON would expect that a “notice of intention to issue, amend or revoke a code of practice or guidelines” must be encompassed in the Bill. NARGON would also expect that any new or changed code or guideline would involve consultation with any person, organisation or group that could be affected from day one.

Clause 84

- NARGON believes Clause 84 places insufficient requirements on the Director-General to ensure the issues to be addressed in a code of practice or guidelines are not covered by other enactments. The words ‘*endeavour to*’, must be deleted so that there is absolutely no overlap with matters contained in an enactment.
- In addition, clause 84 should also clearly state that a code of practice will not be introduced when existing self-regulatory codes or co-regulatory codes are already in existence. This would go some way towards eliminating the doubling up of codes from two separate regulatory frameworks, which would undoubtedly lead to confusion for the private sector.

Clause 374

- *Clause 374 (r)*: The prohibition on or regulation of the importation manufacture, packing, or sale of any thing likely to introduce or increase a risk to public health in regards to non communicable diseases is not required. The Director General already has the power under Clause 83(1) to issue a code of practice or guideline in respect of **any** activity that is likely to reduce or assist in reducing a risk factor with, or related to, the activity.
- *Clause 374(w)*: Given the wide powers of the Bill there is the potential for substantial industry fees to be imposed under Clause 374(w).
- *Clause 374(x)*: This clause gives extremely wide powers to regulate without any of the checks and balances that apply to legislation which proceeds through Parliament. It conflicts with part 3 of the Bill which provides for a non-regulatory approach to addressing any risks associated with non communicable diseases.

3. Recommendations

- *Clause 81*: That if any prospective codes of practice or guidelines are to be issued by the Director General, they must first be taken up by the relevant sector to conduct an independent review in accordance with best practice, along with independent monitoring and reporting back to the Ministry and other relevant stakeholders.
- *Clause 81*: Notwithstanding our recommendation above, any prospective codes of practice or guidelines issued by the Director General must follow a mandatory and rigorous criteria checklist.
- *Clause 82*: That part of the checklist for issuing or modifying codes of practice or guidelines must also include a “notice of intention” and must include a significant and transparent discussion with key affected people and groups from day one.
- *Clause 84*: That the words ‘endeavour to’ are removed from clause 84 of the Bill.
- *Clause 84*: That a code of practice or guideline as stipulated by the Director General should not be able to be issued when a self-regulatory or co-regulatory code already exists.
- *Clause 374(r)*: This clause should not relate to part 3 of the Bill.
- *Clause 374(w)*: Any fees set that are pursuant to this clause should be subject to discussion with industry.
- *Clause 374(x)*: This clause should be deleted.
- Reference to public health education campaigns should be included in the Bill.