AUSTRALIAN FOOD & GROCERY COUNCIL

AFGC SUBMISSION

SENATE COMMITTEE ON COMMUNITY AFFAIRS
INQUIRY INTO FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT (FORUM ON FOOD REGULATIONS AND OTHER MEASURES) BILL 2015

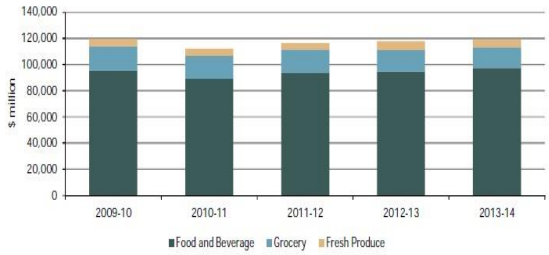
Sustaining Australia

PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 190 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors.

Figure 3.1: Composition of the defined industry's turnover ($2013-14)[11]



Source: Based on ABS, catalogue number 8221.0, 8159.0 and 8155.0

Australia's food and grocery manufacturing industry takes raw materials and farm products and turns them into foods and other products that every Australian uses every day. With an annual turnover in the 2013-14 financial year of $118 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity. It adds over $32 billion to the value of the products it transforms.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector is Australia's largest manufacturing industry. The diverse and sustainable industry is made up of over 26,651 businesses and represents 30% (almost one third) of the total manufacturing industry in Australia.

The food and grocery sector accounts for over $61.7 billion of the nation's international trade in 2014-15, with a trade surplus worth over $10 billion to the Australian economy in 2014-15. These businesses range from some of the largest globally significant multinational companies to family-based small and medium enterprises.

The food and grocery manufacturing sector employs more than 322,900 Australians, paying around $16.1 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with over 40% of the total persons employed being in rural and regional Australia. It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

The contribution of the food and grocery sector to the economic and social well-being of Australia cannot be overstated. Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.

Data source: *AFGC and EY State of the Industry 2015: Essential Information: Facts and Figures*

SUMMARY

On 15 October 2015 the Senate referred the *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015* (the Bill) to its Community Affairs Legislation Committee (the Committee) for inquiry,

The Australian Food and Grocery Council (AFGC) provides this submission in response to an invitation from the Committee dated 19 October 2015 to comment on the Bill.

In summary, the AFGC understands that the Bill seeks five reforms –

1) Amend the *Food Standards Australia New Zealand Act* (the FSANZ Act) to replace all legislative references to the Ministerial Council on Food Regulation with its proposed new name, the Forum on Food Regulation

2) Revise the notification requirements in relation to food regulatory measures so that notices are not required to be published in newspapers, but are placed on the Food Standards Australia New Zealand (FSANZ) website

3) Revise the requirements that FSANZ undertake regulatory impact assessments, such that a regulatory impact statement is only prepared "if appropriate"

4) Reform the membership of the FSANZ Board and make certain positions open to a competitive selection process

5) Correct a number of minor drafting errors.

The AFGC supports reforms 2 and 5 above. The AFGC does not consider reform 1 to be necessary but does not object to it. Reform 3 is regressive, especially when FSANZ recommendations are not subject to Parliamentary review. Reform 4 in one aspect misconceives the Board appointments, and fails to address more systematic issues with the FSANZ Board.

COMMENT

THE FORUM ON FOOD REGULATION

Much of the Bill is devoted to changing the name of the Ministerial Council established under the Commonwealth, State and Territory agreement relating to the adoption of uniform food standards, and the Australia New Zealand treaty in relation to the bi-national adoption of food standards. This Council is the ultimate decision-maker in the food standards development process, consisting of relevant ministers nominated by each participating jurisdiction and where each jurisdiction has a single vote.

The AFGC has no objection to the provisions in the Bill which change references to the Ministerial Council to its new name, the Ministerial Forum on Food Regulation. However, the AFGC notes that names do come and go, and it is not clear why legislative change of

such an extent is necessary when the same end might be achieved by a reference to the Council as established form time to time under any name.

NOTIFICATION OF FOOD REGULATORY MEASURES

The AFGC supports regulatory recognition of the widespread adoption throughout Australian society of technology including broadband connected computers and mobile devices such as smart phones and tablets. A recent paper prepared by the AFGC in conjunction with Telstra, GS1 and Cadence Economics indicates that smart phone penetration in the Australian market is now at 80% (4 out of 5), rising to 95% (19 out of 20) over the next 5 years (see *A Smart New World*, AFGC 2015).

Accordingly, the AFGC supports the provisions that lift from FSANZ the obligation to publish notices relating to food regulatory measures in newspapers circulating in Australia and New Zealand. Such advertising is expensive and cumbersome in modern society when a web search would quickly direct interested parties to the FSANZ website. The AFGC further notes that FSANZ maintains a significant mailing list of interested stakeholders for providing notice of regulatory measures.

The AFGC further notes that the definition in s.7 of the FSANZ Act for 'public notice' includes publishing the notice on the FSANZ website. It may be appropriate therefore for those provisions in the Bill that refer to publishing a notice on FSANZ's website (Schedule 1, Items 17, 21, 35 and 39) to instead refer simply to giving public notice. Schedule 1, Item 84 may also be redundant given that section 96(3) refers to FSANZ giving public notice – the Item should perhaps simply omit the subsection.

In a similar vein, the amendments in Schedule 1 Items 77 and 105 seem redundant. These amendments require the Forum on Food Regulation to publish a notice "on the internet" – a somewhat vague direction – when FSANZ is required to also give public notice (which, as noted above, includes publication on its website) – see Schedule 1 Items 78 and 106.

Given that regulators appear to acknowledge the widespread adoption of technology and seek to use technological solutions to providing public information, it is to be hoped that the same understanding and policy will flow into regulator's own decision making when it comes to industry obligations. The AFGC strongly endorses technology solutions for the provision of information to the public and calls for regulatory reform to permit the greater use of technology solutions within regulatory obligations.

REGULATORY IMPACT ASSESSMENT

Schedule 1 Items 14, 32 and 101 of the Bill amend the FSANZ to provide that a Regulatory Impact Statement (RIS) is only made available "if appropriate". The AFGC understands this not to mean that the RIS is prepared but is not made available, but rather that a RIS is not prepared at all.

The AFGC appreciates that in some instances, current Government policy does not require a RIS process to be undertaken. The AFGC further understands that it is currently the Office of Best Practice Regulation (OBPR) that decides whether or not a regulatory

impact assessment is or is not undertaken. The proposed amendments are understandable in such a context – if OBPR does not consider a RIS process necessary, there is no document that FSANZ can provide to fulfill its statutory obligation.

The AFGC, though, is concerned that such a process lacks the transparency that a RIS provides. The OBPR provides advice based only on the information provided to it by FSANZ, which is not contestable, nor is the reasoning and determination of the OBPR required to be made public. This is particularly concerning in the case of FSANZ processes because any ensuing food standards are not subject to Parliamentary review, but are established without review and without appeal by the Forum on Food Regulation. In such a case, the transparency that a RIS provides is an important safeguard.

The AFGC therefore does not support these amendments. Rather than leaving the preparation of a RIS to the somewhat vague test of "if appropriate", the AFGC recommends that the FSANZ Act refer to making available either a RIS or the submission to, and reply from, OBPR that justifies why a RIS is not required. This would ensure a degree of transparency, and opportunity for contestability, in relation to the RIS process.

FSANZ BOARD REFORM

FSANZ decisions are made by a Board consisting of 12 members, including the FSANZ CEO. The Bill reforms and clarifies how these members are to be appointed. In particular, it provides that four of the members (the industry member, the consumer rights member, the science member and the public health member) are to be selected on the basis of "a competitive selection process that covers both Australia and New Zealand" (see Schedule 2 Item 6, especially the new s.116 subsection (4).

The AFGC supports competitive selection processes, but notes that the requirement to include New Zealand in the competitive selection process misconceives the nature of the positions. Examining the Table in proposed section 116 (pp22-23 of the Bill), it can be seen that New Zealand already has 3 positions reserved on the Board for persons with expertise in science, public health and industry (see Items 2 and 3 of the Table). The four Board positions contemplated at Items 4, 5 and 6 are rather intended for Australian participants – to make the selection process open to New Zealand candidates, as subsection (4) requires, would means that the FSANZ Board could potentially be made up of 7 New Zealand members out of a Board of 11 members. This is not what the ANZ Food Standards Treaty or the Australian inter-Governmental agreement on food standards contemplates.

The AFGC recommends that the words "and New Zealand" be removed from the proposed section 116A(4).

More broadly, the AFGC considers that the number and composition of the FSANZ Board should be reviewed to ensure that its decision making reflects modern needs. The AFGC can point to the lack of progress in developing Australia's health claims system (where just 5 out of more than 30 new claims have been reviewed, and ALL of them rejected, despite ALL of them having been approved by a rigorous process of the European Food Safety Authority and having been in place in the EU for many years) as evidence that

current FSANZ decision making is overly conservative and not engaged with the global realities of Australia's economy and manufacturing industry. The AFGC expects that FSANZ would also achieve efficiency gains and cost reductions were the Board to be reduced in size from 12 to, say, 8 members whose experience was less academic in relation to the practicalities of food manufacturing in the 21st century.

MINOR CORRECTIONS AND AMENDMENTS

The AFGC has reviewed the various other matters addressed in the Bill and has no concerns.

CONCLUSION

The AFGC supports, or has no objections to, the measures in the Bill with some caveats –

(1) Schedule 1, Items 17, 21, 35 and 39) should refer to giving public notice rather than notification on FSANZ's website.

(2) Schedule 1, Item 84 should omit the subsection rather than duplicate website notification requirements.

(3) Schedule 1 Items 77 and 105 should omit the paragraphs rather than duplicating website notification requirements.

(4) Schedule 1 Items 14, 32 and 101 should refer to the provision of a RIS or the details of an OBPR assessment that a RIS is not required, rather than stating that a RIS is only required "if appropriate".

(5) The words "and New Zealand" be removed from the proposed section 116A(4) (Schedule 2, Item 6 refers).