AUSTRALIAN FOOD & GROCERY COUNCIL

AFGC
Level 2, 2-4 Brisbane Ave
Barton ACT 2600
P 02 6273 1466
F 02 6273 1477
AFGC.ORG.AU

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015

On 25 March 2015 the Selection of Bills Committee referred the above Bill to the Economics Legislation Committee for inquiry and report. The Australian Food and Grocery Council (AFGC) is pleased to provide a submission to the Committee. The AFGC represents Australia's food and grocery manufacturers and brand owners ranging from multinational corporations through to family owned small businesses, comprising an industry sector with annual turnover of $114 billion and directly employing 300,000 Australians, half of those in regional and rural areas.

The AFGC commends the Bill to the Committee and considers it should be passed without amendment.

In particular, the Bill seeks to exclude food and beverages from the scope of the mandatory reporting provisions in the Competition and Consumer Act (CCA). This is not about food safety. The AFGC emphasises that this is a deregulatory measure about resolving duplication between Commonwealth and State/Territory agencies, in favour of the State/Territory system that has been shown to be effective in protecting public safety. While there are cost savings to industry that arise from the removal of the CCA requirement, the AFGC and the industry it represents would not seek to trade legitimate safety regulation for reduced costs, nor would it expect this Government or the Parliament to countenance such a trade. The food industry does not compromise where food safety regulation is concerned.

The key point is that State/Territory agencies take the lead in relation to reporting, investigating and taking action on food borne illness. Currently, State and Territory public health laws require hospitals and medical practitioners to report food related illness, injuries or deaths, including serious illnesses or instances where there are multiple cases. These laws target food related illnesses which are of importance from a food safety perspective, and the requirement on health and medical practitioners to report them activates the extensive state and territory public health laws and protocols that respond to food related illnesses, including investigation and product recalls where appropriate.

Recent cases bear out the effectiveness of this system and also illustrate why mandatory reporting to the ACCC adds no extra food safety assurance or safeguard. The highly publicised cases earlier this year relating to the alleged hepatitis A

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contamination of imported frozen berries and the Sydney scombroid fish incident were both thoroughly investigated by the relevant state agencies who took decisive action. Neither case would have been notified to the ACCC under mandatory reporting because the relevant State agencies were already taking the necessary action to protect public health.

Similarly the AFGC is aware of an instance where a young man in Victoria suffered a fatal anaphylaxis after consuming a coconut water drink that had an undeclared milk allergen as an ingredient. No-one involved in this young man's medical care told the importer or seller of the product about the incident and so it was never notified to the ACCC under the mandatory reporting requirements. Rather, the incident was investigated by the Victorian Department of Health and the product eventually recalled by the importer.

According to government data since the requirement of mandatory reporting to the ACCC was introduced there have been more than 4000 reports made but only two have required follow-up by food regulators. This follow up revealed one had already involved separate enforcement action by food regulators and the other was concerning an allergic reaction to a 'hot and spicy' fast food product and was not a food safety matter. In effect there have been more than 4000 false alarms as a result of mandatory reporting, each of which takes up valuable time for food companies, regulators and the ACCC.

Food related reports make up nearly half of all reports to the ACCC under the ACL, and even the ACCC and Commonwealth, State and Territory food safety regulators consider these reports to be of limited value. The reports received under the ACL have not led to improved food safety outcomes for consumers. On the other hand, administering the reports received under the ACL takes up a significant amount of time and resources for regulators which could be better spent in ensuring better outcomes for consumers.

The AFGC agrees with the Government's synopsis of the problems created for food and beverage manufacturers and regulators by this scheme – it requires duplicatary notifications from different agents in the supply chain based on mere allegations of harm, allowing time for only the most basic fact checking investigation by the manufacturer and usually well before any conclusions can be determined. The scheme is taking up regulatory and industry resources with no actual safety outcomes being delivered.

To illustrate the point, the following example is based on a real case, with the products de-identified. A consumer complained to a supermarket that he consulted a doctor after experiencing a burning sensation in his mouth after consuming a food. He was, according to the report, given a medical certificate and told to take paracetamol for any pain. The supermarket informed the manufacturer's representative. No further details are available as the consumer did not wish to provide contact details. This incident was required to be reported by the

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supermarket to the ACCC within 48 hours of the consumer contact, and by the manufacturer within 48 hours of being told by the supermarket. Two reports on the same incident, neither capable of any meaningful follow up with the consumer involved.

In this instance the manufacturer did test retention samples of the product to ensure its manufacture was within specification, as a cautionary response to the reported incident. In fact, a 2012 AFGC survey of 457 food-related reported "incidents" showed that 75% of reports involved products that were highly unlikely to be related to the alleged harm, but as in this case, food and beverage manufacturers take their safety responsibilities very seriously, and are highly responsive to consumer complaints.

In summary, the AFGC commends the government for removing this unnecessary and unproductive regulation while preserving the overall integrity of the food safety regulatory system. This proposal will not affect the tools available to the government under the ACL to deal with products, including foods, which are considered to be unsafe. For example, in addition to state and territory food safety and public health regulations, under the ACL the Commonwealth minister may issue a recall notice for consumer goods of a particular kind, including food products, where it appears to the minister that such goods will or may cause injury.

Once again, the AFGC thanks the committee for the opportunity to make this submission and commends the Bill to the Committee, with a recommendation that it should be passed without amendment.

Yours sincerely

Gary Dawson
Chief Executive Officer

17 April 2015