

Australian Food and Grocery Council SUBMISSION

AUGUST 2011

TO:

HOUSE OF REPRESENTATIVES ECONOMICS STANDING
COMMITTEE

IN RESPONSE TO:

INQUIRY INTO THE FOOD STANDARDS AMENDMENT
(TRUTH IN LABELLING - PALM OIL) BILL 2011.



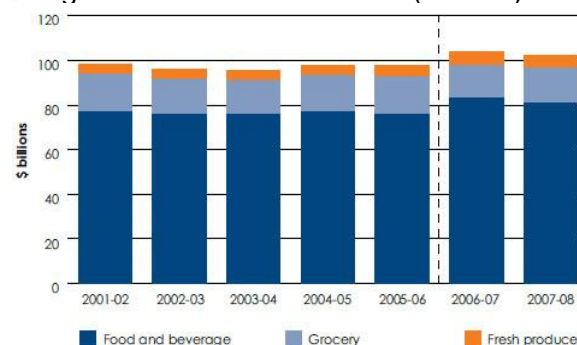
1. PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia’s food, drink and grocery manufacturing industry. Membership of AFGC comprises more than 150 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. (A full list of members is included in Appendix A).

AFGC’s aim is for the Australian food, beverage and grocery manufacturing industry to be world-class, sustainable, socially-responsible and competing profitably domestically and overseas.

With an annual turnover of \$102 billion (Figure 1), Australia’s food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation’s future prosperity.

Figure 1. Industries turnover (2007-8)



Source: ABS, catalogue number 8221.0 and 8159.0*

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector¹ is Australia’s largest and most important manufacturing industry, four times larger than the automotive parts sector – the food and grocery manufacturing industry is a vital contributor to the wealth and health of our nation. Representing 28 per cent of total manufacturing turnover, the sector is comparable in size to the Australian mining sector and is more than four times larger than the automotive sector.

The industry’s products are in more than 24 million meals, consumed by 22 million Australians every day, every week and every year. The food and grocery manufacturing sector employs more than 288,000 people representing about 3 per cent of all employed people in Australia paying around \$13 billion a year in salaries and wages.

The growing and sustainable industry is made up of 38,000 businesses and accounts for \$44 billion of the nation’s international trade. The industry’s total sales and service income in 2007-08 was \$102 billion and value-added increased to nearly \$27 billion². The industry spends about \$3.8 billion a year on capital investment and over \$500 million a year on research and development.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia³. 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.

¹ Fast moving consumer goods includes all products bought almost daily by Australians through retail outlets including food, beverages, toiletries, cosmetics, household cleaning items etc..

² AFGC and KMPG. *State of the Industry 2010*. Essential information: facts and figures. Australian Food and Grocery Council. Oct 2010.

³ About Australia: www.dfat.gov.au

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2. SUMMARY

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to make a submission to the House of Representatives Economics Committee inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009.

This submission should be considered as an addition to the AFGC submission provided to the Senate Community Affairs Legislation Committee inquiry into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009.

This submission provides further information supporting why industry is opposed to mandatory labelling of products containing palm oil. It seeks amendments to ensure that, if the Bill is passed, industry will have increased capacity to comply with the requirements.

AFGC recognises the community concerns around the production of palm oil and strongly supports the need to produce and source palm oil more sustainably. We encourage all food and grocery manufacturers to join the Roundtable for Sustainable Palm Oil (RSPO) and source certified sustainably-produced palm oil to ensure the impact on the environment is minimised but the economic development benefits to the countries and communities of the palm oil industry can continue. A number of large users of palm oil are already members of the RSPO and have driven the volume of certified oil production capacity to approximately 3.5 million tonnes in 2010.

The Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 is an unnecessary, unworkable and unenforceable piece of legislation that attempts to override existing, well established processes for developing and implementing legislation.

- It is unnecessary because a large proportion of the users of palm oil within the food and grocery sector have already made commitments to source sustainable palm oil by 2015 where sufficient quantities can be obtained and Australia only accounts for 0.3 per cent of the world palm oil consumption.
- It is unnecessary because consumers already have information on labels regarding the amount of saturated fats present in the product. Labelling palm oil will not have any additional health benefit.
- It is unworkable and unenforceable on the basis that it is virtually impossible and very costly for enforcement agencies to detect the origin of palm oil derivatives which do not differ in chemical composition from derivatives of other vegetable oils.
- The Bill attempts to bypass existing processes for legislation implementation, overrides State and Territory laws and has had limited stakeholder or public consultation or review of impacts.

3. CONTRARY TO GOVERNMENT PROCESS

The Bill severely undermines existing government process in that it fails to adhere to the Council of Australian Governments (COAG) agreement on the process for the development of policy and regulation through the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) and attempts to override State and Territory laws.

Under the Australian system of government, the legislative power to establish and enforce laws governing the safety, composition and labelling requirements of food falls to the States and Territories. The Australia New Zealand Food Standards Code (the Code) is not a Commonwealth Act, but rather a Standard which is adopted by reference in each of the States and Territories in Australia.

This arrangement was established through an Inter-Governmental Agreement (IGA) under COAG, which established the ANZFRMC with the power to accept or reject recommendations made by Food Standards Australia New Zealand (FSANZ) for the amendment of the Code.

The IGA also establishes the authority of the ANZFRMC to create policy in respect of the development of food laws, for which FSANZ must have regard to in the development of recommendations to amend the Code.

The development of both regulatory policy and the development of proposed food standards are undertaken through a consultation process specified under the IGA, using a flexible consultative mechanism to accommodate the diversity of views and interests across the spectrum of production, processing and manufacturing, transport and distribution, retail and catering and consumers.

The obligation imposed on FSANZ by this *Truth in Labelling (Palm Oil) Bill* attempts to circumvent the requirements of COAG, in that it is effectively introducing a policy over the development of a Standard and thereby subverts the authority of the ANZFRMC. The accepted process for established developing food standards through FSANZ is to make an application for the development of a standard, as outlined on the Standards Development webpage: <http://www.foodstandards.gov.au/standardsdevelopment/> . It can also be through a Proposal raised by FSANZ, usually under the direction of the government.

The Bill clearly undermines the current Council of Australian Governments' (COAG) Blewett Labelling Review process which contains recommendations on palm oil. The Australian Government along with States and Territories are currently developing a comprehensive response to the Blewett Review which will go to COAG early next year. This legislation circumvents this process.

AFGC requests the House of Representatives Economics Committee to recommend the Bill not be passed on the grounds that it:

- fails to comply with the COAG agreement on the process for the development of policy and regulation through the ANZFRMC;
- undermines the existing labelling review being undertaken by the government; and
- attempts to over-ride State and Territory laws.

4. THE BILL IS UNWORKABLE AND UNENFORCEABLE

Food and consumer goods labelling should not be used as a *de facto* tool to drive particular interest issues other than those directly related to health or safety of the product itself.

The Bill would require the mandatory labelling of any good that uses palm oil in its production including food, non food grocery items such as home and personal care products (shampoo, creams & cosmetics etc) and cleaning and chemical products.

It proposes to require labelling for the use of palm oil “*regardless of the amount of palm oil used in the food or used to produce the food*”. This would require any miniscule amount whether as an individual stand alone ingredient in a product or a derivative of palm oil incorporated as part of another ingredient in the manufacturing process (e.g. colouring, flavouring, emulsifiers or processing aids) to be included on the label of a product.

AFGC has significant concerns in relation to the process of determining whether the oil content of a product is sourced from palm oil or from another source.

Fatty acids, such as lauric acid or stearic acid, which are two of the fatty acids commonly obtained from palm oil, are also some of the most widely distributed fatty acids in foods. Laboratory analysis of products can detect the presence of these derivatives, but cannot identify whether they are sourced from Palm Oil or obtained from other materials. These same derivatives are naturally occurring in other products, for example, stearic acid is naturally present in milk fats (5-15%), animal lard (10%), tallow (15-30%), cocoa and shea butters (30-35%).

This fact makes the Bill practically unenforceable and merely another regulatory cost on business with no health, nutritional or sustainability benefits. The Australian Competition and Consumer Commission (ACCC) will have responsibility to enforce the requirements of the Bill and AFGC holds real concerns that there is limited capacity for the agency to do so.

The requirements incorporated into the Bill requiring manufacturers to label products within twelve months of the commencement of the Act are un-realistic. Twelve months is not long enough for industry to revise and re-label thousands of stock keeping units (SKU). The standard amount of time given for label changes is a minimum of 24 months. This is in line with other mandatory labelling changes such as the fortification of flour for bread making with folic acid.

There are a number of long life food and grocery products that have shelf life longer than 12 months. Some products are shelf stable for longer periods of time by necessity and, if the Bill was to be passed, may be in breach of the legislation given the requirement for products to be labeled within 12 months of Royal Assent. Many non-food products (soaps, shampoos, cleaning agents etc.) contain palm oil or derivatives and have long shelf lives. Would these products have to be removed from the shelf after 12 months if they are still present? If so this could potentially cause a large amount waste, undermining significant gains in this area by industry.

AFGC questions the capacity of ACCC to differentiate between products that are in breach of the law and those that have a long shelf life. There is no requirement for many of these products to have a “packed on” or “use by” stamp on their packaging. The only way this can be achieved is for ACCC to trace the product through its barcode through the supply chain which is a lengthy and costly process

particularly as many of the non food products are manufactured overseas further complicating the process.

The Bill potentially breaches the Australia / New Zealand Food Treaty, where Australia must not introduce any amendments to food law “without effective consultation” with New Zealand. NZ authorities have not been consulted and AFGC understand they will not enforce the requirements causing an inconsistent and costly regulatory approach between the two countries which have a high volume of trade in food and grocery products.

AFGC requests the House of Representatives Economics Committee to recommend the Bill not be passed on the grounds that it is unworkable, unenforceable and represents extremely poor public policy development which will achieve nothing but increased requirements and costs for Australian business.

If in the unfortunate case this Bill does get passed by the Australian Parliament, it is essential to have the following Amendments:

- **Schedule 2 – Amendment of the Competition and Consumer Act 2010**
- **Section 33 subsection (2) - That the bill be amended to allow for a 36 month label implementation timeframe.**

5. THE BILL WILL ADD ANOTHER COSTLY REGULATORY BURDEN TO BUSINESS

The Bill requires food and grocery manufacturers to re-label all of the products that contain (even miniscule) amounts of palm oil. Australian businesses will be forced to incur significant costs to determine if their products actually contain palm oil or derivatives of palm oil. Assuming businesses are able to do so, they will then be required to re-label up to thousands of stock keeping units (SKUs) as a result of this legislation. Any positive outcome of such action is negligible at best and a costly waste of time and resources at worst.

This issue of costs and competitiveness is not confined to large or big businesses. There are thousands of small and medium sized enterprises (SME's) that produce food and non food products that potentially contain palm oil. The costs and complexity faced by SMEs to analyse and label their products will impose significant requirements, which come on top of an already tough business environment and waning consumer confidence. The requirements will mean small and medium sized businesses have to incur more costs as a result of government regulation and attempt to pass them onto consumers in what is regarded by many as one of the toughest retail climates in recent years.

The cost of changing a single label is between \$5000 and \$15,000⁴ per SKU. As there are up to 60,000 products on Australian supermarket shelves – with a large proportion containing palm oil or a derivative of palm oil – this equates to hundreds of millions of dollars in extra costs for business with no benefit to the environment or the health of Australian consumers.

AFGC understands the Bill will not apply in New Zealand, or other key Asian markets for food and grocery products, meaning many producers may be forced to consider dual labels for the one product - one for the domestic and one for the international product. This will increase the price of the product, thus reducing the competitiveness of the product and organisation.

Undermining of the competitiveness of many Australian products will be further exacerbated by the fact that most of the large manufacturers of food and grocery products which represent a high proportion of the volume of products have already responded to the issue of palm oil by sourcing sustainable palm oil and joining the Roundtable for Sustainable Palm oil (RSPO). Larger users of palm oil in Australia that have the capacity to do so including Goodman Fielder, Unilever, Coles, Woolworths and Nestle have made a commitment to purchase sustainably produced palm oil by 2015 and as the supply of certified sustainable palm oil (CSPO) increases.

Importantly industry is best placed to drive improvements in the push for more sustainable palm oil consumption and has been making significant achievements in this regard with sales of sustainable palm oil almost tripling in the period from December 2009 to November 2010⁵. If regulatory measures are put in place then there is no doubt that they will detract from the existing measures and focus by business of seeking to source more sustainable palm oil.

When the pledges by business are met, the majority of palm oil used in Australia should be certified CSPO or equivalent by 2015. This is an excellent example of industry taking voluntary action in response to issues associated with palm oil production. It is also worthwhile reiterating that Australia consumes less than 0.3 per cent of the global palm oil supply.

AFGC requests the House of Representatives Economics Committee to recommend the Bill not be passed on the grounds that:

- **There is clear evidence that industry is already taking responsible action on the issue of the responsible production of palm oil.**
- **Government action via legislation forcing companies to do what many are already doing voluntarily is a waste of time and resources.**
- **It will result in higher costs for industry at a time when the high costs of manufacturing in Australia are already undermining international competitiveness.**

⁴ Cost Schedule for Food Labelling Changes Final Report (version 2), PWC 7 March 2008

⁵ RSPO, 2010

6. OBJECTIVE OF THE BILL

The amendments to the Bill state that the purpose is to “ensure that consumers have clear, accurate information about the inclusion of palm oil in goods”.

Palm oil is obtained from the flesh ("mesocarp") of the oil palm fruit. Like olive oil, palm oil is a fruit oil. AFGC's view is that palm oil should be regarded as a vegetable oil the same way that olive, canola and sunflower oil are regarded as vegetable oils. The oil is produced from (the seed of) a plant regardless of whether the plant produces a vegetable or a fruit. There is little rationale for palm to be treated differently to other oils derived from 'fruits' such as coconut, coco and olive on a health or on a sustainability basis.

Information relating to fat and other nutritional information already exists on the product nutrition information panel. In terms of consumer health, the issue relates to the overall amount of saturated fat not its source. The nutrition information panel includes information about the total amount of fat present in the product along with the total amount of saturated fat. Most fats and oils contain a mixture of saturated and unsaturated fats.

Clearly, consumers already have the information they need on the total amount of saturated fats in the products they buy.

Research has shown that palm oil plantations are not the primary or major cause of deforestation in Indonesia and Malaysia. The research showed that palm oil accounted for only 20 to 30 per cent of forest land clearing in these countries. Both Indonesian and Malaysian Governments have implemented policies to stop the clearing of rain forests for palm oil plantation development. Palm oil is an extremely efficient crop producing up to 10 times more oil per unit area than soybean, rape or sunflower producing about 30 per cent of the world's vegetable oil on less than 5 per cent of the total area under oil crops.

Deforestation (both legal and illegal) has been an ongoing concern in many developing countries. There is little evidence to suggest that labelling palm oil in Australia would change the level or extent of deforestation in Indonesia or Malaysia. The end result of land clearing (for whatever reason) is that it obviously has an impact on the environment. It is for this and a number of other reasons the AFGC strongly supports the RSPO, the cooperative industry, government and non-government organisation initiative that supports the production of sustainable palm oil and encourages the industry to source and support the developing market for such products. The RSPO is the best placed scheme to work with all stakeholders to improve the sustainable production of palm oil.

AFGC requests the House of Representatives Economics Committee to recommend the Bill not be passed on the grounds that:

There is no rationale for consumers needing to identify palm oil in food and grocery products as opposed to any other vegetable oil beyond health, safety or nutritional content criteria.

7. CONCLUDING STATEMENT

The passing of this Bill would be an extremely poor outcome for all concerned – including industry, government and the consumer.

The food and grocery industry clearly recognises the community concerns around the production of palm oil and strongly supports the need to produce and source palm oil sustainably.

Industry is actively making voluntary commitments to source sustainable palm oil by 2015 or when sufficient supplies are available. There is simply no need to impose regulatory burden on business for what is already happening. The process that has been undertaken to date in relation to this Bill undermines and compromises all existing government approaches in relation to good public policy development and implementation. It will result in unenforceable and unworkable regulation that does not achieve better environmental or health outcomes but will be costly for ACCC and for industry.

If passed, The Food Standards Amendment (Truth in Labelling –Palm Oil) Bill 2009 will result in FSANZ developing a standard outside its terms of reference that will not be adopted by States and Territories so will be of no substantive value.

Amending the Competition and Consumer Act to specifically reference palm oil and no other oils or ingredients is not based on any evidence of consumer adverse outcomes.

The *Food Standards Amendment (Truth in Labelling – Palm Oil)* Bill 2009 should be rejected, or at a very minimum significantly amended to ameliorate some of the excessive costs, and regulatory burden which the food and grocery industry will face in complying with its requirements, as outlined in this submission.

AFGC Membership as at 31 JULY 2011

Arnott's Biscuits Limited
Asia-Pacific Blending Corporation P/L
Barilla Australia Pty Ltd
Beak & Johnston Pty Ltd
Beechworth Honey Pty Ltd
Beerenberg Pty Ltd
Bickfords Australia
Birch and Waite Foods Pty Ltd
BOC Gases Australia Limited
Bronte Industries Pty Ltd
Bulla Dairy Foods
Bundaberg Brewed Drinks Pty Ltd
Bundaberg Sugar Limited
Byford Flour Mills T/a Millers Foods
Campbell's Soup Australia
Cantarella Bros Pty Ltd
Cerebos (Australia) Limited
Cheetham Salt Ltd
Christie Tea Pty Ltd
Church & Dwight (Australia) Pty Ltd
Clorox Australia Pty Ltd
Coca-Cola Amatil (Aust) Limited
Coca-Cola South Pacific Pty Ltd
Colgate-Palmolive Pty Ltd
Coopers Brewery Limited
Danisco Australia Pty Ltd
Devro Pty Ltd
DSM Food Specialties Australia Pty Ltd
Earlee Products
Eagle Boys Pizza
FPM Cereal Milling Systems Pty Ltd
Ferrero Australia
Fibrisol Services Australia Pty Ltd
Fonterra Brands (Australia) Pty Ltd
Food Spectrum Group
Foster's Group Limited
Frucor Beverages (Australia)
General Mills Australia Pty Ltd
George Weston Foods Limited
GlaxoSmithKline Consumer Healthcare
Go Natural
Goodman Fielder Limited
Gourmet Food Holdings
H J Heinz Company Australia Limited
Harvest FreshCuts Pty Ltd
Healthy Snacks
Hela Schwarz
Hoyt Food Manufacturing Industries P/L
Hungry Jack's Australia
Jalna Dairy Foods
JBS Australia Pty Limited
Johnson & Johnson Pacific Pty Ltd
Kellogg (Australia) Pty Ltd
Kerry Ingredients Australia Pty Ltd
Kimberly-Clark Australia Pty Ltd

Kraft Foods Asia Pacific
Laucke Flour Mills
Lion Nathan National Foods Limited
Madura Tea Estates
Manildra Harwood Sugars
Mars Australia
McCain Foods (Aust) Pty Ltd
McCormick Foods Aust. Pty Ltd
McDonald's Australia
Merisant Manufacturing Aust. Pty Ltd
Nerada Tea Pty Ltd
Nestlé Australia Limited
Nutricia Australia Pty Ltd
Ocean Spray International Inc
Only Organic 2003 Pty Ltd
Parmalat Australia Limited
Patties Foods Pty Ltd
Pfizer Consumer Healthcare
Procter & Gamble Australia Pty Ltd
Queen Fine Foods Pty Ltd
QSR Holdings
Reckitt Benckiser (Aust) Pty Ltd
Safcol Canning Pty Ltd
Sanitarium Health and Wellbeing
Sara Lee Australia
SCA Hygiene Australasia
Schweppes Australia
Sensient Technologies
Simplot Australia Pty Ltd
Spicemasters of Australia Pty Ltd
Stuart Alexander & Co Pty Ltd
Subway
Sugar Australia Pty Ltd
SunRice
Tasmanian Flour Mills Pty Ltd
Tate & Lyle ANZ
The Smith's Snackfood Co.
The Wrigley Company
Tixana Pty Ltd
Unilever Australasia
Vital Health Foods (Australia) Pty Ltd
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Wyeth Australia Pty Ltd
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CoreProcess (Australia) Pty Ltd
*CropLife
CROSSMARK Asia Pacific
Dairy Australia
Food Liaison Pty Ltd
FoodLegal
*Foodservice Suppliers Ass. Aust.
*Food industry Association QLD
*Food industry Association WA
*Food Q
Foodbank Australia Limited
*Go Grains Health & Nutrition Ltd
Grant Thornton
GS1
Harris Smith
IBM Business Cons Svcs
innovations & solutions
KN3W Ideas Pty Ltd
KPMG
Leadership Solutions
Legal Finesse
Linfox Australia Pty Ltd
Logan Office of Economic Dev.
Meat and Livestock Australia Limited
Monsanto Australia Limited
New Zealand Trade and Enterprise
*PLMA Australia / New Zealand
Red Rock Consulting
RQA Asia Pacific
StayinFront Group Australia
Strikeforce Alliance
Swire Cold Storage
Swisslog Australia Pty Ltd
Tetra Pak Marketing Pty Ltd
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The Nielsen Company
Touchstone Cons. Australia Pty Ltd
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