



AUSTRALIAN  
**FOOD &  
GROCERY**  
COUNCIL

# **AFGC SUBMISSION**

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PRODUCTIVITY COMMISSION:  
MUTUAL RECOGNITION SCHEMES

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*Sustaining Australia*

# SUMMARY

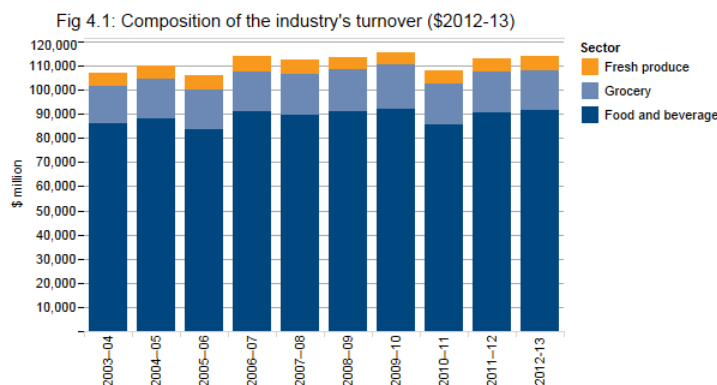
*The Australian Food and Grocery Council –*

- (1) Strongly supports both the national and trans-Tasman mutual recognition schemes as the principal mechanism to promote economic integration through the removal of jurisdictional barriers, and further as drivers of regulatory reform; and*
  
- (2) Considers there is a need to reinvigorate the principles and practice of mutual recognition to avoid “exception creep” that undermines the benefits that can be achieved, and to this purpose recommends a review of all existing exemptions under both domestic and trans-Tasman schemes.*

## 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 178 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.



Source: Based on ABS, catalogue number 8221.0, 8159.0 and 8155.0  
 Note: As outlined in chapter 3 of the State of the Industry 2014 report, caution should be applied when comparing data before and after the 2006 ANZSIC code changes.

With an annual turnover in the 2013-14 financial year of \$114 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.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector is Australia's largest manufacturing industry. Representing 27.5 per cent of total manufacturing turnover, the sector accounts for over one quarter of the total manufacturing industry in Australia.

The diverse and sustainable industry is made up of over 27,469 businesses and accounts for over \$55.9 billion of the nation's international trade in 2013-14. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry spends \$541.8 million in 2011-12 on research and development.

The food and grocery manufacturing sector employs more than 299,731 Australians, representing about 3 per cent of all employed people in Australia, paying around \$12.1 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 almost half 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.

Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.



## COMMENTS

*(1) The AFGC strongly supports both the national and trans-Tasman mutual recognition schemes as the principal mechanism to promote economic integration through the removal of jurisdictional barriers, and further as drivers of regulatory reform.*

The food and grocery sector is fortunate in having largely uniform product and labelling regulation throughout Australia and New Zealand (see <http://www.foodstandards.gov.au/about/background/foodregagreements/Pages/default.aspx>). However, mutual recognition plays a significant role in addressing the few areas of difference.

The best example of this role is shown by the existence in New Zealand of the *Supplemented Food Standard* governing a range of food-based dietary supplement products, which has no counterpart within the joint ANZ Food Standards Code and thus applies only in New Zealand.

(<http://www.foodsafety.govt.nz/elibrary/industry/nzfood-supplementedfood-standard-2013.pdf>)

This standard permits foods to contain added substances that would be prohibited under Australian law, and to an extent can be described as fostering innovation while protecting safety. Under the Trans-Tasman Mutual Recognition Arrangement (TTMRA), products that are made in, or imported into, New Zealand in compliance with the *Supplemented Food Standard* may be legally sold in Australia (subject to the requirements of the enabling legislation).

This has two beneficial impacts –

- (a) Australian consumers are not denied the benefits of product innovation that might otherwise be jeopardised by the more restrictive domestic standards; and
- (b) The presence in the Australian market of such products is itself a driver for reform.

There are two classic case studies to demonstrate these benefits.

Energy drinks (formally “formulated caffeinated beverages”) were introduced to Australia as a direct result of the TTMRA, beginning in 1999. Such products were permitted in New Zealand under the predecessor of the Supplemented Food Standard, and were one of the first products to take advantage of the TTMRA. After establishing their presence in market, the leading world manufacturer applied for a formal food standard within the ANZ Food Standard Code, which was duly approved (see <http://www.comlaw.gov.au/Series/F2008B00793>)

A second example relates to so-called “vitamin waters”, which again were permitted in NZ as dietary supplements but prohibited under Australian food standards (due to a policy based not on safety but on nutrition grounds that micronutrients should be derived from the natural source). The ability for NZ manufacturers to bring such products to Australia under the TTMRA was a key factor used by the Australian industry to agitate for equal treatment, again resulting in a change to Australian standards.

The key understandings from these two examples are that mutual recognition has –

- (a) NOT led to any regulatory “race to the bottom” where public safety is compromised;
- (b) led to market-driven regulatory reform;
- (c) been effective in mitigating trade barriers; and
- (d) promoted the access of consumers to innovative products.

In these respects, mutual recognition is seen as a success.

*(2) The AFGC considers there is a need to reinvigorate the principles and practice of mutual recognition to avoid “exception creep” that undermines the benefits that can be achieved, and to this purpose recommends a review of all existing exemptions under both domestic and trans-Tasman schemes.*

The success of mutual recognition, however, has not come without setbacks and costs, which demonstrate the need for continued reinvigoration of the economic and regulatory drivers which underlie the schemes.

- (a) *Exemptions continue to mitigate the efficacy of the schemes.* While origin labelling is a contentious issue, the Commerce (Trade Descriptions) legislation (an exemption to the TTMRA) requires origin labelling on most imported products where New Zealand, in contrast, does not mandate origin labelling. The imposition of such an “Australia only” labelling obligation runs counter to the goals of TTMRA. The exemptions given by the Council of Australian Governments to State-based beverage container deposit schemes serves as an example of “exemption creep” in the domestic mutual recognition space where, again, the benefits of mutual recognition seem to play a lesser role in policy and regulatory practice.
- (b) *Advertising is subject to jurisdictional rules.* Mutual recognition applies to product labelling and composition, and extends to on-label claims. Advertising of the product in a market, however, is subject to ‘manner of sale’ regulation in the recognising market, leading to the odd situation where a product might carry on-pack claims that are illegal to advertise. A theoretical example would be that a NZ Supplemented Food might contain micronutrients at levels in excess of the maximum permitted claim for the micronutrient under food standards that apply in Australia. The inability to (truthfully) market product with nutrient quantity claims mitigates the economic benefit of market access.
- (c) *Process issues and uncertainty have created costs.* The agency responsible for the operation of the Imported Food Control Act (at the relevant time, AQIS) changed, without notice, its interpretation of the meaning of “imported into NZ” for the purposes of the TTMRA. Rather than having to be trans-shipped in NZ, it was required to pass the customs barrier in NZ. This added to trans-shipment costs and was applied in relation to product that had already landed in Australia, leading to process costs to dispose of goods (see *Re Red Bull (Australia) Pty Ltd and Secretary, Department of Agriculture, Fisheries*

and Forestry [2011] AATA 157; 10 March 2011). Greater transparency as to the operational aspects of mutual recognition can avoid such issues.

**Contact details**

Should the Commission wish further information, please contact –

Mr Chris Preston, Director Legal and Regulatory

