



**Australian Government**  
**Department of Industry,  
Innovation and Science**

Presiding Commissioner Lindwall and Commissioner Baxter  
Regulation of Australian Agriculture Inquiry  
Productivity Commission  
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Dear Commissioners

**Regulation of Australian Agriculture – Productivity Commission Draft Report**

Thank you for providing the opportunity to comment on the Productivity Commission's draft report on Regulation of Australian Agriculture.

The Department of Industry, Innovation and Science is a focal point for the development of policies that foster business innovation and competitiveness in Australia's food and agribusiness industries. The department also delivers a range of programmes and initiatives to encourage businesses in the industry to improve their productivity and competitiveness. The Industry, Innovation and Science portfolio also delivers scientific research and expertise to businesses through its various science agencies.

The department has been analysing opportunities to enhance business competitiveness through greater alignment of domestic food standards set under the Australia New Zealand Food Standards Code (the Food Standards Code) with comparable international standards. Work is also underway to reduce duplicative industry-imposed private quality assurance auditing burden. Based on the work to date, the department makes the following comments in relation to Chapter 9 on food regulation.

**Gluten-free labelling** (page 364)

While this part of the report provides a useful overview of the implications of Australia's labelling requirements specifically for gluten-free foods, the department suggests recommendation 9.2 could focus on assessing whether the Australian Consumer Law (ACL) constrains the ability to set standards for 'free' claims more broadly under the Food Standards Code.

The Australian Competition and Consumer Commission's (ACCC's) interpretation of 'free' is absolute (ie there can be no detectable level of the relevant substance in a product).<sup>1</sup> This interpretation is enforced through the ACL which prohibits a business from making statements in trade or commerce that are false, misleading or deceptive, or which are likely to mislead or deceive.<sup>2</sup>

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<sup>1</sup> See information on premium claims in the Australian Competition and Consumer Commission's (ACCC's) *Advertising and Selling Guide* at <http://www.accc.gov.au/accc-book/printer-friendly/29527>

<sup>2</sup> Section 18 of Schedule 2 to the Australian *Competition and Consumer Act 2010*.

The ACL requirements are acknowledged in the submission to your report from Food Standards Australia and New Zealand (FSANZ) which notes that in developing or reviewing food standards FSANZ “must have regard to other relevant legislation, including the ACL” and that the ACCC “provides guidance on making ‘free’ claims”.

Given the Food Standards Code applies to a broad range of substances and the requirement for FSANZ to consider the ACL in developing standards, the department suggests the interaction of the ACL with the Food Standards Code could be examined by the Productivity Commission in more detail.

This work could consider whether this interaction is delivering optimal regulatory outcomes and whether it is likely to be able to continue to do so into the future. Key questions include whether there is adequate flexibility to respond to future innovations in food composition and testing procedures and whether the current system allows the consideration of standards that are consistent with international norms, such as those applying to gluten.

### **Information request 9.3: Food safety audits (page 375)**

The Productivity Commission sought views on whether there are opportunities to further reduce the burden of regulatory food safety audits while still achieving regulatory objectives.

While the department notes the decision to not specifically focus on commercial safety audits, the Productivity Commission could nonetheless explore the potential to reduce the auditing burden by State/Territory/Local Government food authorities where compliance with statutory obligations has already been substantiated through commercial audits.

Food businesses supplying multiple customers must often meet a large number of private quality assurance processes (PQAPs) and undergo multiple audits. Some requirements are competitively driven and unique to a particular customer,<sup>3</sup> however a significant proportion of requirements are the same or very similar across PQAPs and with State/Territory statutory requirements for food safety. While there are strong commercial incentives for food manufacturers and processors to meet these standards, businesses have expressed significant frustration at the cost and time associated with complying with multiple audits, particularly where food safety standards subject to audit are very similar or the same across their customers' PQAPs.

While the department notes the comments received by the Productivity Commission indicate differing views on this issue, it considers there is scope to reduce duplication through increased recognition of commercial audits by regulatory bodies. This approach may reduce statutory auditing processes while enabling governments to adopt a more targeted and cost-effective approach to enforcing food standards. It would also build on the work that has been initiated by industry to harmonise standards and consolidate recognition of audits such as the Harmonised Australian Retailer Producer Scheme.

The Australian Food and Grocery Council is currently undertaking a project in conjunction with Food Innovation Australia Limited to examine industry-imposed auditing standards and identify ways to reduce auditing burden in the food processing industry. This project, which has been allocated \$154,000 by the Australian Government, is considering the cost and frequency of commercial audits and builds on a scoping study which found that streamlining

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<sup>3</sup> These can include customer preferences for freshness, appearance, shelf-presentation and other factors that food service firms, quick-service restaurants and supermarket retailers pursue to distinguish themselves from competitors.

food safety auditing practices would lead to substantial rewards for all stakeholders. The scoping study also found that there is increased willingness by food purchasers and suppliers to address the increasing burden and cost of food auditing requirements.

Thank you again for providing the opportunity to comment on the draft report. I would be happy to discuss this submission in further detail.

Yours sincerely

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