



Flour Millers' Council of Australia

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Regulatory Burdens – Manufacturing and Distributive Trades
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

Dear Sir/Madam

Response to Draft a Research Report

The Flour Millers Council of Australia (FMCA) has previously submitted to this review and makes the following response to the Draft Research Report June 2008.

This response will be restricted to the items under Food Manufacturing Regulation, draft response 3.1 to 3.5.

In keeping with our initial submission, we will again use by way of example, legislation for mandatory fortification of bread making flour with folic acid.

In summary, FMCA supports each of the draft responses 3.1 to 3.5 as provided in the draft research report.

DRAFT RESPONSE 3.1

The Australian Government should publicly announce what reforms are to be implemented, and their timing, as a result of the analysis undertaken as part of the Bethwaite review. In finalising its report on regulatory burdens for this year, the commission will consider, having regard to any announced reforms, the need for a further limited review to improve national consistency of food regulation.

It is the view of FMCA, that food standards legislation as adopted should be consistent throughout the country, and additionally, the method and mode used for regulatory compliance should be consistent throughout all jurisdictions.

The legislation for mandatory fortification of flour with folic acid is not able to be complied with by flour mills and is unable to be measured analytically. This has opened the way for individual jurisdictions to determine alternative ways that they might monitor fortification in default of measurement against the legislated standard. The mode of measurement of a standard should not be subject to jurisdictional preference.

DRAFT RESPONSE 3.2

The changes made to the Food Standards Australia and New Zealand Act 1991 to improve the timeliness and stakeholder consultation in the amendment and development of food standards should be independently reviewed, two years after their implementation.

It is the view of FMCA that such an independent review is necessary due to the poor implementation record in achievement of intended outcomes.

DRAFT RESPONSE 3.3

The Ministerial Council should amend the Food Regulation Agreement to reflect the general practices for decision-making by other Ministerial Councils established to oversight, coordinate and integrate policy, such as the Australian Transport Council, the Gene Technology Ministerial Council and the ministerial Council on Energy. In particular, the Ministerial Council should require a majority vote to initiate a review of a draft amendment of the Food Standards Code prepared by Food Standards Australia New Zealand.

The Ministerial Council should incorporate, in managing its business, and explicit process step of ensuring that all requests from members of the Ministerial Council to initiate a review provide justification in terms of the criteria that are specified in part III of the Food Standards Agreement. The justification for any review shall be published.

FMCA expects that this proposal would eliminate the circumstance with the folic acid legislation where FSANZ has incorrectly assumed a position handed down from the Ministerial Council to be a policy directive as to the outcome it should deliver. To achieve this outcome has required FSANZ to compromise itself by dismissing the guidelines it is bound to and further dismissing COAG guidelines especially in matters of Regulatory Impact Statement and relative cost effectiveness.

(We refer to your summation of these previously documented circumstances on p 41 of the Draft Research Report under the sub heading 'Assessment').

It is wrong that an outcome in the form of poor legislation has been justified on what is essentially a conveniently and wrongly assumed directive. Intended policy direction from the Ministerial Council is in terms of broad guideline, rather than pre-empting and directing an outcome.

DRAFT RESPONSE 3.4

The agreed to COAG guideline for the development of regulation should be incorporated into the Food Regulation Agreement. The Australia New Zealand Food Regulation Ministerial Council should publish a regular report of its regulatory actions against the COAG regulatory guidelines. Compliance could be further improved by having the Chair of the Ministerial Council manage the regulatory business of the Council so as to comply with these guidelines.

It is the view of FMCA that in matters of such importance as food regulation it is mandatory that established and agreed guidelines are complied with. It is important to all stakeholders, especially the Government that the integrity of the food standards setting process cannot be challenged and that consumers have confidence in outcomes delivered by FSANZ in food legislation.

Our view is that the process for Food Standards must not allow for political interference. In the case of folic acid the criteria set down for FSANZ in law have not been complied with COAG guidelines have not been met (including Office of Best Practice Regulation sign off).

The result is that the legislation in place has not conformed with important agreed protocol and process.

DRAFT RESPONSE 3.5

The Australia and New Zealand Food Regulation Ministerial Council should not consider making decisions on matters of public health through food regulation until such time as the Australian Health Ministers' Conference has considered all policy responses and referred the relevant matters to the Australia and New Zealand Food Regulation Ministerial Council for a food regulation response.

It is the view of FMCA that not only should the above apply but that a thorough consideration of the role and competency of FSANZ to consider such matters should be made. We would maintain that FSANZ has been established for the purposes of consideration of matters of food safety and that by default and extended definition of terms of reference matters of public health have been assumed to be within the competency of FSANZ.

In any case in matters of public health we would maintain that items of a nutritional consideration only should be clearly delineated from matters that have medical implication. It is necessary that an outcome of the draft response 3.5 is that matters that are referred to FSANZ can only be those that are distinctly within the capabilities and intended domain of FSANZ.

SUMMARY

In support of the position taken by Flour Millers' Council of Australia in responding to the Productivity Council we make the following points;

1. The legislation for mandatory fortification with folic acid results after non compliance with guidelines and requirements of the Food Standards setting process.
2. This legislation is unable to be complied with, nor tested for compliance within the absolute limits of the legislation; i.e. minimum of 2ppm to a maximum of 3ppm of folic acid addition.
3. This leaves flour milling companies open to potential common law class action should any circumstance arise requiring that flour mill records demonstrate compliance within the range in 2. above. (The reason for the upper level is based on potential health & safety risk of overdose).
4. We believe that it is intolerable for Government to put in place legislation that effectively passes risk to flour millers in the form of potential future legal liability.
5. At the time of writing this high cost process continues as resolves on how technical compliance with the legislation might be accomplished are subject to high level working groups and more importantly to the flour milling industry no resolve is available on the legal liability issue.

Yours faithfully,



Graeme Lukey
Executive Director
Flour Millers' Council of Australia