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31 July 2008

Mr Matthew Butlin  
Commissioner,  
Annual Review of Regulatory Burden on Business  
Manufacturing and Distributive Trades  
Productivity Commission  
GPO Box 1428  
Canberra City  
ACT 2601

Email [regulatoryburdens@pc.gov.au](mailto:regulatoryburdens@pc.gov.au)

Dear Commissioner Butlin

**ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS – MANUFACTURING AND  
DISTRIBUTIVE TRADES –  
Chapter 3 Food Regulation**

Fonterra welcomes the opportunity to make a submission to the Productivity Commission (PC) on the Draft Research Report 2008 "Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades".

Fonterra endorses the following draft responses from the PC 32 Annual Review of Regulatory Burdens on Business –

- Draft response 3.1
- Draft response 3.2
- Draft response 3.4
- Draft response 3.5

Fonterra does not endorse the first part of draft response 3.3.

Please note that this submission should be read and considered in conjunction with the 2007 Fonterra submission to the Victorian Competition and Efficiency Commission (VCEC) Inquiry. A copy of this submission is attached.

I trust this information is beneficial to the Productivity Commission and the finalisation of their report to the Australian Government. If you have any queries in relation to the submission please do not hesitate to contact me.

Yours sincerely

Carol Bate  
Regulatory Manager Australia



**Submission**

to the

**Productivity Commission**

on

**Annual Review of Regulatory Burdens on  
Business**

**Manufacturing and Distributive Trades – Chapter 3  
Food Regulation**

by

**Fonterra Co-Operative Group Limited**

**31 July 2008**

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## **1. PREFACE**

Fonterra Australia Pty Ltd is part of the Fonterra Co-Operative Group Limited which is a multinational dairy company. Fonterra processes 21 per cent of all Australian milk at 11 manufacturing sites in Victoria, New South Wales and Western Australia. Fonterra's brands in Australia include Connoisseur, Mainland, Perfect Italiano, Western Star, Bega, Anlene™, and Brownes. In Australia, Fonterra has revenues of \$1.9 billion and employs over 2000 people.

Fonterra is a global dairy business, involved in large-scale milk procurement, processing and management, with a supply chain spanning more than 140 countries. Fonterra is the world's largest exporter of dairy products. The company has A\$ 9.94 billion in total assets and revenues of A\$10.36 billion, employing more than 18 000 people worldwide.

Dairy innovation is a key to every part of the Fonterra business. Through its state-of-the-art scientific research facilities in Palmerston North, NZ and Melbourne, Australia and its global network of research and development facilities, Fonterra is a leader in dairy science and innovation. Fonterra products are synonymous with innovation in bone health, maternal health, child nutrition and goodness. They are found in many types of manufactured products, pharmaceuticals, food service outlets including bakeries, restaurants, hotels etc and in refrigerators across Australia and New Zealand and around the world under global brand names that include Mainland, Tip Top, Soprole, Anchor, Anlene™ and Fernleaf.

Fonterra is committed to the development of innovative dairy products to improve the health and wellbeing of consumers.

## **2. EXECUTIVE SUMMARY**

Fonterra welcomes the opportunity to make a submission to the Productivity Commission (PC) on the Draft Research Report 2008 "Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades". Fonterra supports a regulatory framework which is risk based, ensures food safety, is consistently enforced in different jurisdictions and allows for food industry innovation.

Fonterra agrees with the PC comment that a number of recent reviews of the Australian food regulation system have highlighted problems of inconsistency in regulation and enforcement across jurisdictions, lengthy delays and difficulties in implementing new food standards and amending existing standards as well as problems with the regulation making process and surrounding governance arrangements.

Consistency in Australian food regulation could be improved by –

- Adoption of the “core” provisions of Annexe A of the Model Food Act by all jurisdictions, as was agreed to in the Food regulation Agreement (FRA);
- Consistent legal interpretation of the Food Standards Code (FSC) and enforcement of the FSC by all jurisdictions;

The Implementation Sub-Committee (ISC) is the component of the Australia and New Zealand food regulation framework which has the role to ensure consistent enforcement of food regulations by all jurisdictions. Fonterra is aware that ISC is currently developing their 2008-09 strategic implementation plan with the objective that standards implementation plans will be developed in parallel with the food standards development process undertaken by Food Standards Australia New Zealand (FSANZ). Fonterra suggests this approach also include strategies and actions to address the following –

- Consistency of legal advice on interpretation of food standards and their application;
- Formal consultation mechanisms on industry compliance with developing standards through the FSANZ consultation process;
- Development of protocols as to how ISC will consult and interface with key stakeholders, including industry; and
- Development of formal feedback mechanisms with key stakeholders to assess performance against key performance indicators (KPI's).

In relation to nutrition, health and related food claims, Fonterra suggests the Code of practice for nutrient claims (CoPoNC) (including the definitions for “fat free” and “no fat”) be incorporated into both the Australian Competition and Consumer (ACCC) (Trade Practices Act) and the Food Standards Australia New Zealand (FSANZ) (Food Standards Code) legislation. This would mean claims such as “fat free” where the amount of fat has no clinical significance from a public health perspective would be allowed provided they met the current CoPoNC criteria. This would result with the Australian regulations being aligned with the international *Codex alimentarius* food regulation.

Fonterra endorses the following draft responses from the PC 32 Annual Review of Regulatory Burdens –

- Draft response 3.1
- Draft response 3.2
- Draft response 3.4

- Draft response 3.5

Fonterra does not endorse the first part of draft response 3.3.

Please note that this submission should be read and considered in conjunction with the 2007 Fonterra submission to the Victorian Competition and Efficiency Commission (VCEC) Inquiry. A copy of this submission is attached.

### **3. INTRODUCTION**

Fonterra strongly supports regulations which yield efficient food safety and quality outcomes, whilst minimising compliance and administration costs, and facilitating food industry investment in innovation. Innovation is the key to profitability in competitive world food markets. For the Australian food industry to develop and remain internationally competitive there is a requirement for innovative products which deliver improved nutrition and wellness benefits to consumers.

It is important for the regulatory framework and food standards to be -

- Risk based;
- Efficiently administered – a flexible, timely and transparent system;
- Nationally consistent - ensure a consistent operation (including interpretation and enforcement of the FSC) of the food regulatory system in all jurisdictions;
- Evidence based.

### **4 INCONSISTENCY**

Fonterra agrees with both i) the comments in Chapter 3 Food Regulation of the Productivity Commission (PC) Draft Report in relation to 3.1 Inconsistency and ii) the following quote from the Australian Food and Grocery Council (AFGC) which stated that the jurisdictions –

- Have different expectations and priorities for the food regulatory system and how it should operate;
- Do not agree on priorities for food regulation resulting in different levels of agency resource allocation and technical competencies between jurisdictions including in enforcement;
- Have adopted the Model Food Bill to differing degrees resulting in a lack of national uniformity.

The Australian regulatory system comprises the Australia New Zealand Food Regulation Ministerial Council (MinCo), the Food Regulatory Standing Committee

(FRSC) and the Implementation Sub-Committee (ISC). The role of ISC is to ensure consistent enforcement of food regulations in all jurisdictions.

Consistency in the interpretation and administration of food regulation by regulators would contribute to enhanced clarity for manufacturers. Fonterra is a multi-site manufacturer with many suppliers. The company has products sold across not only Victoria but all other Australian jurisdictions. Nationally consistent regulations will assist to ensure obligations are met throughout the process and supply chain.

National consistency in food regulation would not only be improved through ensuring the jurisdictions adopt the “core” provisions of Annexe A of the Model Food Bill as was agreed in the Food Regulation Agreement (FRA) but also through consistent enforcement of the Food Standard Code (FSC). Consistency of enforcement may require further efforts by ISC to ensure consistent legal interpretation of food regulations between the different jurisdictions including the Commonwealth, New Zealand, State and Territory governments.

Fonterra also suggests that ISC may wish to –

- Develop formal consultation mechanisms on industry compliance while standards are being developed through the Food Standards Australia New Zealand (FSANZ) consultation process;
- Develop protocols as to how ISC will consult and interface with key stakeholders, including industry; and
- Develop formal feedback mechanisms with key stakeholders to assess performance against key performance indicators (KPI's).

**DRAFT RESPONSE 3.1**  
**32 ANNUAL REVIEW OF**  
**REGULATORY**  
**BURDENS**

*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.*

Fonterra endorses draft response 3.1

## **5. DELAYS AND DIFFICULTIES IN IMPLEMENTING AND AMENDING FOOD STANDARDS**

Flexible, timely and streamlined national food standards (including those related to health claims and food labelling) as well as the process for amending food standards need to be world's best practice to meet the requirements for food safety and encourage food product innovation.

**DRAFT RESPONSE 3.2**  
**32 ANNUAL REVIEW OF**  
**REGULATORY**  
**BURDENS**

*The changes made to the Food Standards Australia 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.*

Fonterra endorses draft response 3.2

**6. IMPROVING THE OPERATIONS OF THE AUSTRALIAN NEW ZEALAND FOOD REGULATION MINISTERIAL COUNCIL**

In our submission to the VCEC Fonterra supported the VCEC Draft Recommendation 7.2:

*That the Victorian Government support improvements in the governance arrangements for the Australian New Zealand Food regulation Ministerial Council to increase the timelines of decision making and the scope for Australian business to capture the benefits of innovation. Improvements could be achieved by:*

- *The Ministerial Council focusing on providing policy guidance and ratification of standards, leaving technical decision making and proposals on standards to Food Standards Australia New Zealand (FSANZ); and*
- *Two or more jurisdictions agreeing to a review of the Food Standards Code (FSC) before it can proceed. Those jurisdictions requesting a review must also publicly release their reasons and meet the cost of the resources used in undertaking the review.*

It should be clearly defined that a key role for FSANZ in this process is to assess the various options which would meet the policy objectives of MinCo. This would include FSANZ undertaking a cost benefit analysis (drawing on the relevant expertise including the knowledge of other agencies and external specialists) of the various options to achieve the policy outcomes. This may even mean non regulatory approaches are the preferred option.

**DRAFT RESPONSE 3.3**  
**32 ANNUAL REVIEW OF**  
**REGULATORY**  
**BURDENS**

*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 Standard Code prepared by Food Standards Australia New Zealand. The Ministerial Council should incorporate, in managing its business, an explicit process step of ensuring that all requests from members of the Ministerial Council to initiate a review provide a justification in terms of the criteria that are specified in Part III of the Food Standards Agreement. The justification for any review should be published.*

Fonterra does not endorse draft response 3.3 in that the Ministerial Council should require a majority vote to review a draft amendment of the FSC prepared by FSANZ. However, Fonterra does support the second part of the recommendation that all requests for a review are accompanied by justifications as specified in Part III of the Food Standards Agreement and that these justifications are published.

## **7. PROBLEMS IN THE REGULATION-MAKING PROCESS**

### **DRAFT RESPONSE 3.4** **32 ANNUAL REVIEW OF** **REGULATORY** **BURDENS**

*The agreed to COAG guidelines 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.*

Fonterra endorses draft response 3.4

## **8. FOOD REGULATION AND PUBLIC HEALTH**

### **DRAFT RESPONSE 3.5** **32 ANNUAL REVIEW OF** **REGULATORY** **BURDENS**

*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.*

Fonterra endorses draft response 3.5

## **9. NUTRITION, HEALTH AND RELATED FOOD CLAIMS**

Fonterra, like many other food industry stakeholders, is concerned that claims such as “sugar free” and “fat free” or “no fat” will continue to be regulated and enforced through the misleading and deceptive conduct provisions of the Trade Practices Act Food legislation in the USA, European Union and *Codex alimentarius* allows for labels of “sugarfree” and “fat free” when the level is under that which is physiologically insignificant.

### ***Voluntary Code of Practice – CoPoNC***

The Victorian Competition and Efficiency Commission (VCEC) in their 2007 report indicated that the level of compliance with the current voluntary Code of Practice for nutrient claims (CoPoNC) is reasonable and similar to the level of compliance with the Food Standards Code (FSC). This is consistent with Fonterra’s observation that there is industry support and adherence to the CoPoNC criteria.

A suggestion is for the CoPoNC, including the definition for “sugar free” “fat free” and “no fat” to be incorporated into both the Australian Competition and Consumer Commission (ACCC) (Trade Practices Act) and FSANZ (Food Standards Code) legislation.

In the box below is the suggestion Fonterra has made to Food Standards Australia and New Zealand (FSANZ) in their May 2007 submission on preliminary final assessment Health Claims P293 in relation to “Fat Free” and “No Fat” claims (excerpt from submission below).

#### **“Fat Free” and “No Fat” Claims**

Fonterra notes the table to clause 11 in the pFAR (pgs 163 – 170) which has stipulated the requirements for “Low Fat” but has not stipulated the requirements for “Fat Free” and “No Fat” Claims.

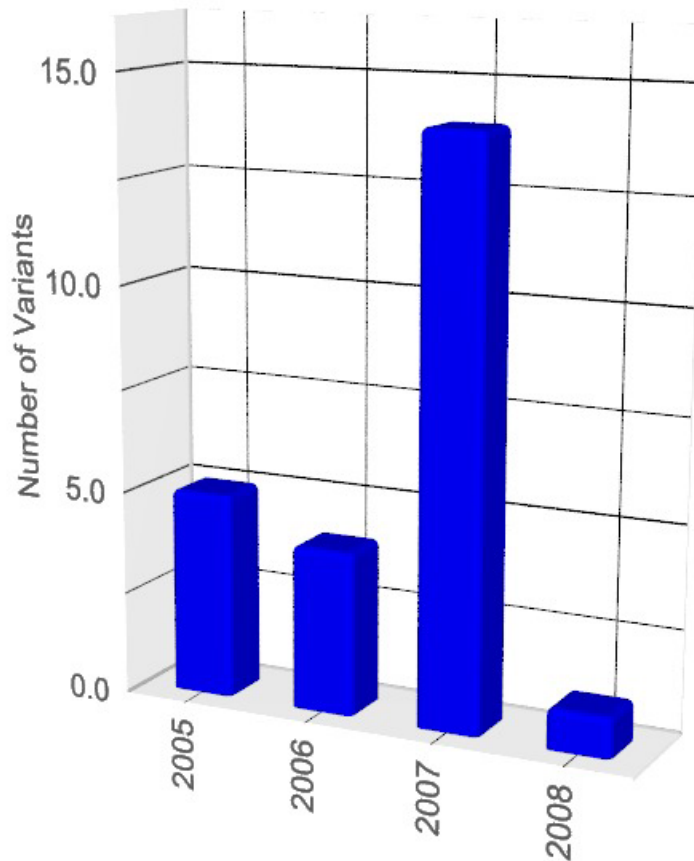
At present many food companies including dairy companies make “No Fat” and “Fat Free” Claims under CoPoNC provisions, which allow for a level of no greater than 0.15g/100g total fat and a cholesterol level of no greater than 3mg/100g. From a public health perspective the clinical significance of the amount of fatty acids rather than no fatty acids is the concern. International regulators including CODEX (*Codex alimentarius*) allow for the levels of “non significant” levels of fat when making “Free” claims.

Fonterra suggests FSANZ retain the “Free” classification with regards to fat, based on the current CoPoNC standard, and this be incorporated into the Food Standards Code.

Innovation and new product development which would grow the category of no fat and low fat dairy products has been constrained by the current

Australian regulations. In the period from 2005 to 2008 a total of 24 low/no/reduced fat liquid milk products have been launched in the Australian market.

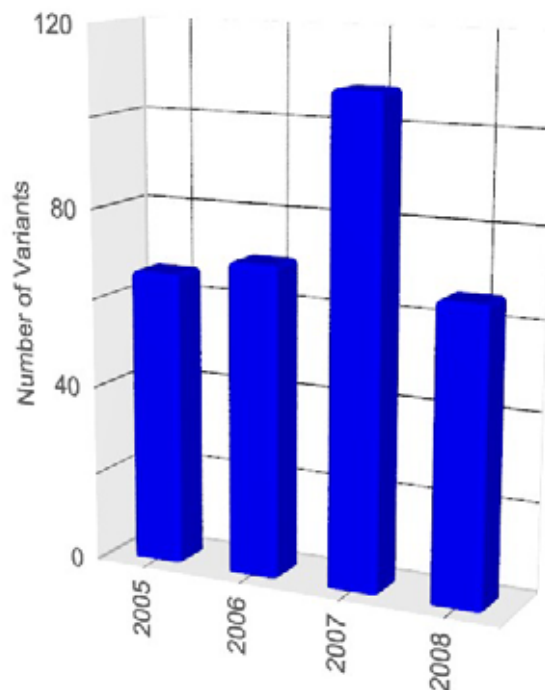
Australia - Liquid Milk Introduced with Low/No/Reduced Fat (January 2005 - June 2008)



Date Published	Dairy	Total Sample
2005	5	5
2006	4	4
2007	14	14
2008	1	1
<b>Total Sample</b>	<b>24</b>	<b>24</b>

In contrast, in the USA where the regulations allow for terms such as “fat free” when the level of fat is under that which is physiologically insignificant, there have been 310 products in the low/no/reduced fat liquid milk product category.

Selected Countries in Europe - Liquid Milk Introduced with Low/No/Reduced Fat (January 2005 - June 2008)



Date Published	Dairy	Total Sample
2005	66	66
2006	70	70
2007	108	108
2008	66	66
<b>Total Sample</b>	<b>310</b>	<b>310</b>

Source: GNPD

where **Date Published** is between *Jan 2005* and *Jun 2008*  
 and **Format Types** matches *Liquid*  
 and **Region** matches *Europe*  
 and **Claims** matches *Low/No/Reduced Fat*.

Countries included – Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Russia, Spain, Sweden, Switzerland, Turkey, UK

Appendix 1 details the size of the fresh milk market for the USA and Australia and provides information on the size of the market categories - ie the size of

the lower and fat free categories in the USA (where the regulatory definitions for fat free allow for low levels of fat which are physiologically insignificant) is much larger than these categories in Australia. Less innovation and investment has been made by Australian companies to grow the market categories. of low and fat free fresh milk.

## **10. CONCLUSION**

Fonterra welcomes the opportunity to respond to the Productivity Commission (PC) on the Draft Research Report 2008 “Annual Review of Regulatory Burdens on Business – Manufacturing and Distributive Trades” – Chapter 3 Food Regulation.

Fonterra endorses the following draft responses from the PC 32 Annual Review of Regulatory Burdens –

- Draft response 3.1
- Draft response 3.2
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Fonterra does not endorse the first part of draft response 3.3.

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# 1 USA

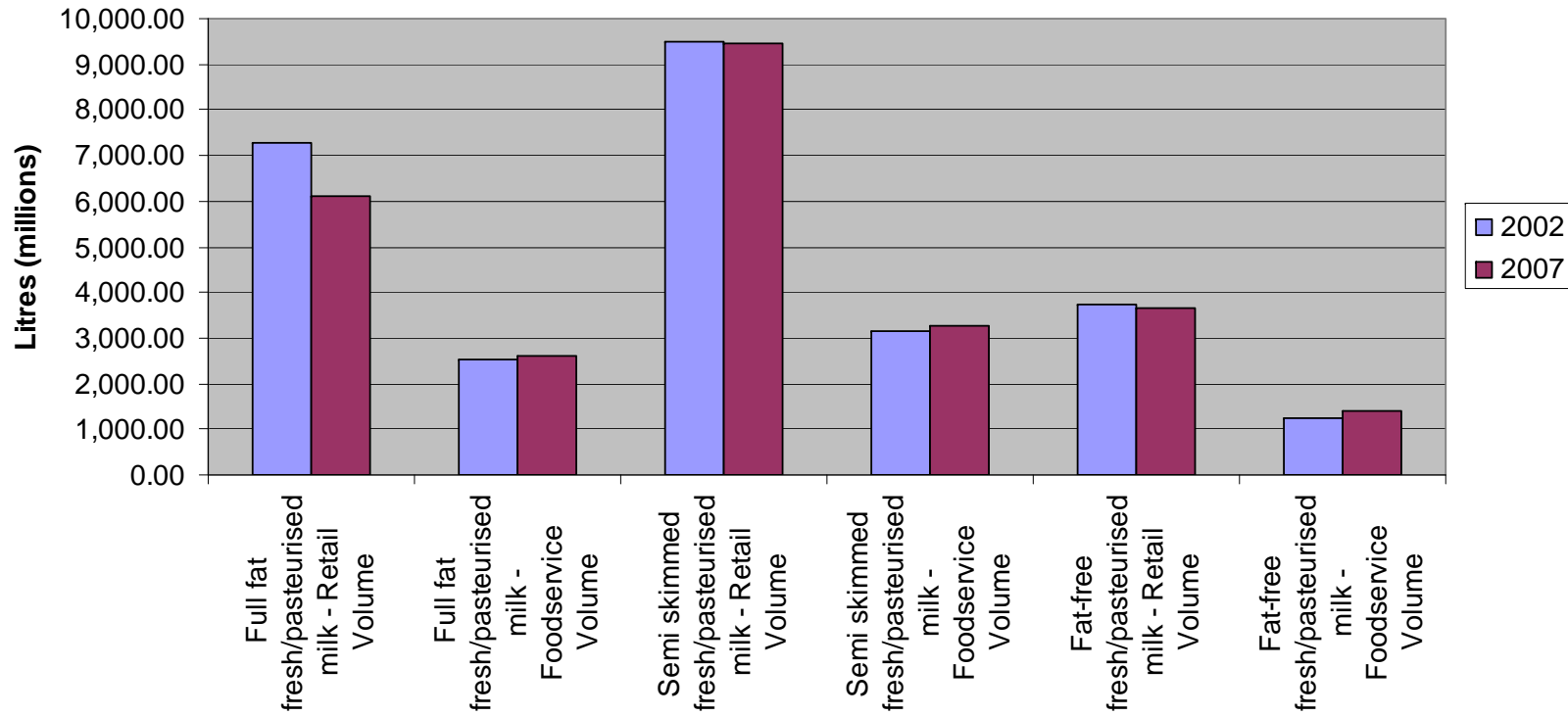
## 1.1 Retail Value – US \$ mn

Market Sizes - Historic - Retail Value RSP - US\$ mn - Value at Current Prices						
USA	2002	2003	2004	2005	2006	2007
Full fat fresh/pasteurised milk	8279.8	8407.3	8981.1	8734.3	8228	8420.7
Semi skimmed fresh/pasteurised milk	10525.4	10509	11478.9	11732.3	11814	12795.5
Fat-free fresh/pasteurised milk	4162.1	4100.8	4422.8	4529.4	4577	4947.7

## 1.2 Volume – million litres – Comparison between Retail and Foodservice

Market Sizes - Retail and Foodservice - Historic - mn litres						
USA	2002	2003	2004	2005	2006	2007
Full fat fresh/pasteurised milk - Retail Volume	7,286.10	7,356.20	7,004.50	6,757.90	6,502.80	6,105.60
Full fat fresh/pasteurised milk - Foodservice Volume	2,510.00	2,550.00	2,520.00	2,570.00	2,590.00	2,600.00
<b>Full Fat Fresh/Pasteurised Milk - Total Volume</b>	<b>9,796.10</b>	<b>9,906.20</b>	<b>9,524.50</b>	<b>9,327.90</b>	<b>9,092.80</b>	<b>8,705.60</b>
Semi skimmed fresh/pasteurised milk - Retail Volume	9,481.60	9,365.50	9,191.30	9,328.90	9,527.30	9,466.70
Semi skimmed fresh/pasteurised milk - Foodservice Volume	3,160.00	3,210.00	3,200.00	3,210.00	3,240.00	3,280.00
<b>Semi Skimmed fresh/Pasteurised Milk - Total Volume</b>	<b>12,641.60</b>	<b>12,575.50</b>	<b>12,391.30</b>	<b>12,538.90</b>	<b>12,767.30</b>	<b>12,746.70</b>
Fat-free fresh/pasteurised milk - Retail Volume	3,738.40	3,636.50	3,548.80	3,609.10	3,698.80	3,668.20
Fat-free fresh/pasteurised milk - Foodservice Volume	1,260.00	1,290.00	1,310.60	1,327.70	1,355.60	1,386.70
<b>Fat-Free Fresh/Pasteurised Milk - Total Volume</b>	<b>4,998.40</b>	<b>4,926.50</b>	<b>4,859.40</b>	<b>4,936.80</b>	<b>5,054.40</b>	<b>5,054.90</b>

### USA - Volume market size comparison between sub-categories and Retail / Foodservice (2002 and 2007)



## 2 Australia

### 2.1 Retail Value – US \$ mn

<b>Market Sizes - Historic - Retail Value RSP - US\$ mn - Fixed 2007 Exchange Rates - Value at Current Prices</b>						
<b>Australia</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Full fat fresh/pasteurised milk	896.6	914.6	926.5	940.4	957.3	976.4
Semi skimmed fresh/pasteurised milk	406.7	441.3	461.1	484.2	518.1	556.9
Fat-free fresh/pasteurised milk	145	156.6	165.9	167.6	174.3	183

### 2.2 Retail Value – Australian \$ mn

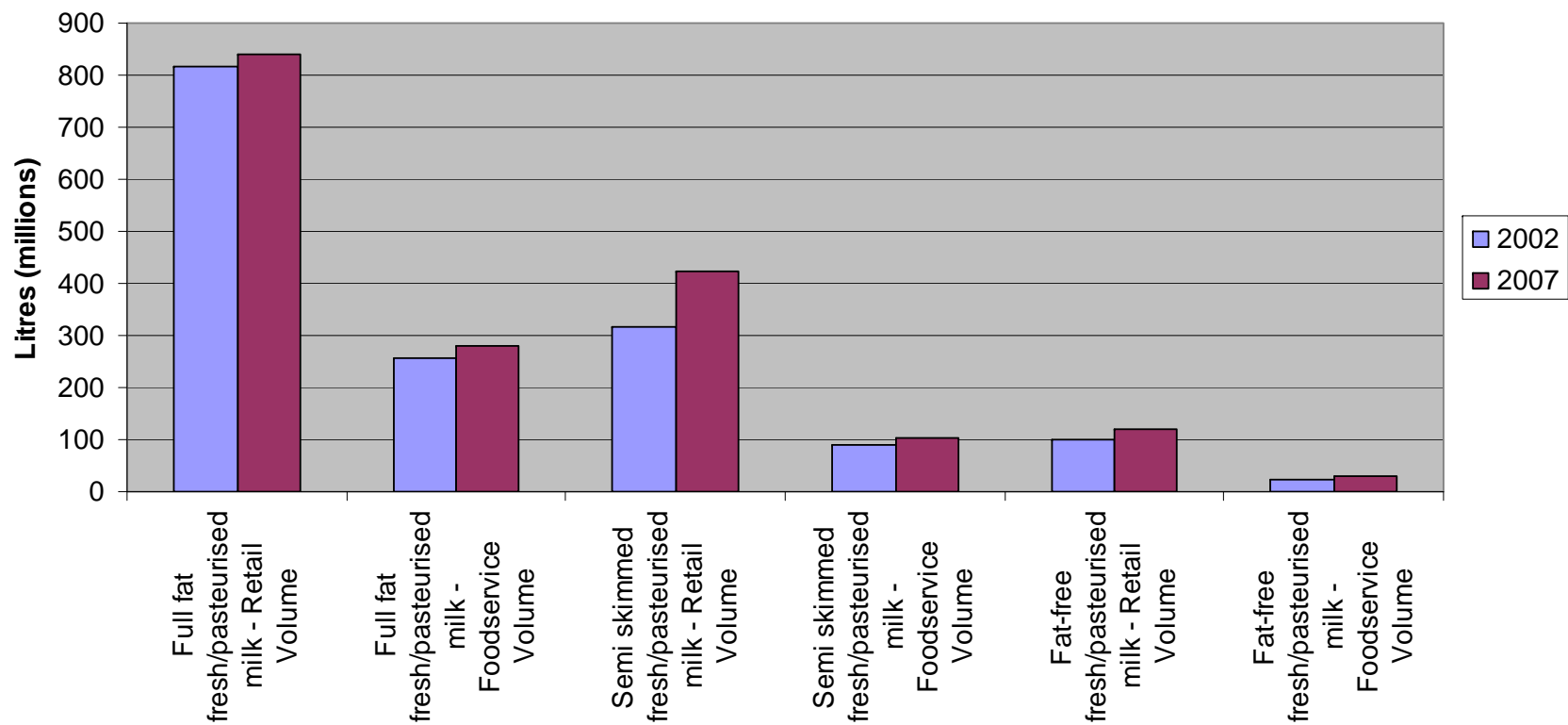
<b>Market Sizes - Historic - Retail Value RSP - A\$ mn - Value at Current Prices</b>						
<b>Australia</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Full fat fresh/pasteurised milk	1243.4	1268.2	1284.7	1304	1327.5	1354
Semi skimmed fresh/pasteurised milk	564	611.9	639.4	671.4	718.4	772.3
Fat-free fresh/pasteurised milk	201	217.1	230.1	232.4	241.7	253.8



2.3 Volume – million litres – Comparison between Retail and Foodservice

<b>Market Sizes - Retail and Foodservice - Historic - mn litres</b>						
<b>Australia</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Full fat fresh/pasteurised milk - Retail Volume	817.5	811	806.9	815	827.2	838.8
Full fat fresh/pasteurised milk - Foodservice Volume	256.3	263.8	267.8	271.5	276.4	281.1
<b>Full fat fresh/pasteurised milk - Total Volume</b>	<b>1073.8</b>	<b>1074.8</b>	<b>1074.7</b>	<b>1086.5</b>	<b>1103.6</b>	<b>1119.9</b>
Semi skimmed fresh/pasteurised milk - Retail Volume	317.8	343.2	356.9	373	397.2	422.3
Semi skimmed fresh/pasteurised milk - Foodservice Volume	88.8	90.2	91.6	93.2	97.9	103.2
<b>Semi skimmed fresh/pasteurised milk - Total Volume</b>	<b>406.6</b>	<b>433.4</b>	<b>448.5</b>	<b>466.2</b>	<b>495.1</b>	<b>525.5</b>
Fat-free fresh/pasteurised milk - Retail Volume	100.9	107	112.3	111.2	115.1	118.5
Fat-free fresh/pasteurised milk - Foodservice Volume	24	25.4	26.7	27.8	28.4	28.9
<b>Fat-free fresh/pasteurised milk - Total Volume</b>	<b>124.9</b>	<b>132.4</b>	<b>139</b>	<b>139</b>	<b>143.4</b>	<b>147.4</b>

### Australia - Volume market size comparison between sub-categories and Retail / Foodservice (2002 and 2007)



**Sources:**

1. Packaged Food: Euromonitor from trade sources/national statistics

For 2007 figures are on a provisional basis on half year estimates this is usually seen for categories that have just been updated to include 2007 figures



# **Submission**

to the

## **Victorian Competition & Efficiency Commission. (VCEC)**

on

### **Simplifying the Menu: Food Regulation in Victoria Draft Report April 2007**

by

**Fonterra Co-Operative Group Limited**

**15 June 2007**

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Regulatory Manager, Australia  
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## **1. PREFACE**

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Fonterra is New Zealand's (NZ) largest company and a global dairy business, involved in large-scale milk procurement, processing and management, with a supply chain spanning more than 140 countries. Fonterra is the world's largest exporter of dairy products.

The company has NZ\$11.8 billion in total assets and revenues of NZ\$12.3 billion, employing more than 18 000 people worldwide.

Dairy innovation is a key to every part of the Fonterra business. Through its state-of-the-art scientific research facilities in Palmerston North, NZ and Melbourne, Australia and its global network of research and development facilities, Fonterra is a leader in dairy science and innovation. Fonterra products are synonymous with innovation in bone health, maternal health, child nutrition and goodness. They are found in many types of manufactured products, pharmaceuticals, food service outlets including bakeries, restaurants, hotels etc and in refrigerators across Australia and New Zealand and around the world under global brand names that include Mainland, Tip Top, Soprole, Anchor, Anlene <sup>TM</sup> and Fernleaf.

Fonterra is committed to the development of innovative dairy products to improve the health and wellbeing of consumers.

## **2. EXECUTIVE SUMMARY**

Fonterra welcomes the opportunity to make a submission to the Victorian Competition and Efficiency Commission (VCEC) on the Draft Report April 2007 Simplifying the Menu: Food Regulation in Victoria. Fonterra supports a regulatory framework which is risk based, ensures food safety, is consistently enforced in different jurisdictions and allows for food industry innovation.

Fonterra agrees with the VCEC that the objective and key priority of the *Food Act 1984* is to reduce the incidence of food borne illness and not the promotion of public health. This is not to say that Fonterra is not committed to working in partnership with public health professionals, government, consumers, community and the regulators to promote health and wellbeing, in accordance with public health objectives.

Fonterra also endorses the VCEC suggestion of clearer objectives and the incorporation of the key priority of reduction of food borne illness as a guiding principle in the Food Act, along with five other principles specifying that regulation should be:

- The minimum necessary to address the problem;

- Risk based;
- Efficiently administered;
- Nationally consistent; and
- Evidence based

Alignment of the amended Food Act with the *Dairy Act 2000* will ensure consistency in regulatory objectives.

Consistency in enforcement not only between the 79 Victorian Councils but also between the Commonwealth, State, Territory and New Zealand jurisdictions is important. The role of the Implementation Sub-Committee (ISC) of the national food regulatory framework is to ensure consistency of enforcement. Fonterra supports the suggestion of the VCEC that Victoria should play a stronger role in influencing the national regulatory framework (including ISC).

National food standards (including those related to health claims and labelling) need to meet food safety objectives and allow for food product innovation. Health claims need to be supported by robust scientific evidence. The most recent assessment report for P293 (health claims standard) from Food Standards Australia New Zealand (FSANZ) suggests a nutrition calculator system (Model 7 in the FSANZ proposal) to determine food composition eligibility criteria for health claims. Fonterra supports this in principle and recommends a review of the calculator which considers a number of issues for Category 2 and Category 3 foods. In relation to the voluntary industry Code of Conduct for nutrient claims (CoPoNC) Fonterra supports the VCEC suggestion that greater consideration be given to adoption of the industry based code for health claims with the proviso that all regulators (including the ACCC) recognise and support such a Code. An alternative approach may be to incorporate the Code criteria into regulations and ensure there is consistency between the various regulations (both the food regulations and the consumer protection regulations).

Fonterra agrees with the VCEC that food labelling should provide consumers with information to make informed choices. However, mandatory labelling should be confined to issues pertinent to food safety.

Fonterra supports:

- The VCEC Draft Recommendation 7.2 in relation to the standards amendment process and suggests that the role of FSANZ should be to assess the various options (utilising both internal and external expertise), including a cost benefit analysis, to meet the policy objectives of MinCo:
- The Draft Recommendations 7.4, 7.5 and 7.6 in relation to misleading and deceptive conduct, maximum residue levels and weights and measures respectively;
- The VCEC Draft Report proposed 7 Draft Recommendations in relation to Improving the Regulatory Framework: State Government Issues;
- The principle of aligning Victoria's food regulatory instruments with national standards; and

- The principle of a risk based approach to audit frequencies in such a way as is consistent with national guidelines by all regulatory bodies.

### **3. INTRODUCTION**

Fonterra strongly supports regulations which yield efficient food safety and quality outcomes, whilst minimising compliance and administration costs, and facilitating food industry investment in innovation. Innovation is the key to profitability in competitive world food markets. For the Australian food industry to develop and remain internationally competitive there is a requirement for innovative products which deliver improved nutrition and wellness benefits to consumers.

Consumers are increasingly aware of the link between diet and health. They are demanding healthy foods to prevent and address chronic diseases such as diabetes. There is an increased awareness of the obesity problem. Consumers with increasing education and income levels are seeking innovative and nutritious foods. This is the case not only in the Australian market but also in export markets including Asia.

It is important for the regulatory framework to ensure food safety and also accommodate these demands for food product innovation.

Fonterra endorses the suggestions of the VCEC for Victoria to play a stronger role in influencing the national regulatory framework to ensure:

- Consistency of enforcement (this may require further efforts to ensure consistent legal interpretation of food regulations between the different jurisdictions including the Commonwealth, New Zealand, State and Territory governments, in addition to the guidance on food regulation and enforcement to be provided by the Department of Human Services (DHS) to Victoria's 79 Councils);
- The timeliness and quality of decisions in relation to national food standards; and
- Encourage the examination of non-regulatory approaches (eg Codes of Conduct) where appropriate.

With multiple regulators there is the potential for overlap or gaps in regulatory coverage. Clarification of roles, regulations which meet policy objectives and alignment of regulations to ensure consistent policy outcomes is desirable.

### **4 THE ROLE OF REGULATION AND CLEARER OBJECTIVES**

Fonterra agrees with the VCEC that the objective and key priority of the *Food Act 1984* is to reduce the incidence of food borne illness and not the promotion of public health. Fonterra is committed to working in partnership with public health professionals, government, consumers, community and the regulators to promote health and wellbeing through education programs and public health initiatives.

Fonterra endorses the VCEC suggestion of clearer objectives and the incorporation of the key priority being reduction of food borne illness as a guiding



principle in the Food Act along with five other principles specifying that regulation should be:

- The minimum necessary to address the problem;
- Risk based;
- Efficiently administered;
- Nationally consistent; and
- Evidence based.

Fonterra also supports the suggestion to increase the powers of the Minister for Health to enable the Minister to issue guidelines to regulators administering the Act and directions to regulators, including local government. The alignment of the *Dairy Act 2000* with the amended Food Act, incorporating Ministerial guidelines similar to those above, will assist with clearer objectives and the consistency of food regulations.

## **5. IMPROVING THE REGULATORY FRAMEWORK: NATIONAL ISSUES**

It is recognised that Victorian regulators (lead agency Department of Human Services (DHS) who co-ordinate a whole of government approach and input to the national regulatory system) play an active role in the ongoing development of the national regulatory framework through membership of the Implementation Sub-Committee (ISC), the Food Regulatory Standing Committee (FRSC) and the various ISC and FRSC working groups. Also the Victorian Minister for Health and the Ministers for Industry Innovation and Regional Development and Primary Industry participate as a voting member of the Australia New Zealand Food Regulation Ministerial Council (MinCo).

However, Fonterra endorses the suggestion of the VCEC for Victoria to play a stronger role in influencing the national regulatory framework to ensure:

- Consistency of enforcement (this may require further efforts to ensure consistent legal interpretation of food regulations between the different jurisdictions including the Commonwealth, New Zealand, State and Territory governments, in addition to the guidance on food regulation and enforcement to be provided by the Department of Human Services (DHS) to Victoria's 79 Councils);
- The timeliness and quality of decisions in relation to national food standards; and
- Encourage the examination of non-regulatory approaches (eg Codes of Conduct) where appropriate with the proviso that all regulators including the Australian Competition and Consumer Commission (ACCC) recognise and endorse such approaches.

Flexible, timely and streamlined national food standards (including those related to health claims and food labelling) as well as the process for amending food standards need to be world's best practice to meet the requirements for food

safety and encourage food product innovation. Consumers are demanding more innovative nutritious food products to meet their health and wellbeing demands.

## **HEALTH CLAIMS**

Whilst there is a requirement for the regulation of health claims, the use of health claims regulations to shift people's eating habits to a healthier diet and address the obesity problem is limited. The promotion of health and wellbeing and a nutritious balanced diet requires education and input from public health professionals. This is not to say that industry, government, the community and public health professionals all have a role to play and the most effective way to address the issue is as a partnership.

### ***Food Standards Australia New Zealand (FSANZ) and P293***

Health claims need to be supported by robust scientific evidence. Scientifically substantiated nutrition, health and related claims should ensure public health and safety and deliver consumer confidence in the validity of the claims.

Food Standards Australia New Zealand (FSANZ) has proposed (via the proposal P293) that health claims on food products be divided into high and general level claims. Scientific evidence to validate the claim will be required. In the case of high level claims the company will be required to make an application to FSANZ with substantiated scientific evidence to support claims. In the case of general level claims the manufacturing company or supplier will need to hold scientific evidence to substantiate the claim

In their most recent assessment report for P293 FSANZ propose a nutrition calculator to determine the eligibility of food to carry a claim based on its composition. The proposed nutrition calculator system (Model 7) is consistent with the FSANZ Act objectives and the MinCo policy guidelines and such a system will assist with enforcement.

However, Fonterra believes that further refinement of the nutrition calculator would broaden the scope of products that are eligible for health claims to include foods that are more moderate than low in energy and fat but denser in other nutrients such as protein, vitamins and minerals. This would be consistent with basic public health messages to the Australian and New Zealand populations.

In summary, Fonterra endorses the principle of Model, 7 however strongly recommends FSANZ review the proposed nutrition calculator for Category 3 foods

- to include the awarding of bonus points for calcium and other essential vitamins and minerals.

Cheddar cheese and other high calcium cheeses should be eligible for health claims, to ensure the regulatory framework is consistent with National Dietary Guidelines and the public health policy position with respect to calcium and other essential nutrients.

In relation to Category 2 foods Fonterra suggests that:

- The restriction of gaining protein points only if maximum fruit and vegetable points are attained for food products with a base line score of  $\geq 11$  be removed;
- The inclusion of wholegrain into the foods that can count towards V points;
- The inclusion of a bonus points system for foods that are eligible to make content claims for a minimum of “good source” of any vitamin, mineral or bioactive substance, with increased points for increased level and increased number of different vitamins, minerals or bioactive substances that meet the minimum level requirements; and
- The inclusion of provision for small serve foods where scoring is based on a per serve basis rather than per 100g with a maximum serve size stipulated for eligibility to be classified as a small serve size food.

These suggested changes would ensure that nutrient profiling reflects current food consumption patterns and the importance of a diversity of essential dietary components.

The proposed health claims standard will be an important regulation underpinning the delivery of nutrition and health messages to consumers allowing them to make informed decisions in relation to food and their diet. The health claims standard will also be important to the continued innovation and economic prosperity of the Australian and New Zealand food industry.

### ***Consumer protection from misleading and deceptive conduct***

Fonterra agrees with the VCEC (Draft Report April 2007 page 150) that the current regulations under the Trade Practices Act provide consumers with protection against false or misleading claims. This regulation is a strong incentive for companies to ensure the validation of claims is supported by substantiated scientific evidence and there is no deceptive conduct or misleading of consumers.

### ***Voluntary Code of Practice – CoPoNC***

The VCEC Draft Report indicates the level of compliance with the voluntary Code of Practice for nutrient claims (CoPoNC) is reasonable and similar to the level of compliance with the Food Standards Code. This is consistent with Fonterra’s observation that there is industry support and adherence to the CoPoNC criteria.

Fonterra supports the VCEC suggestion that greater consideration be given to the adoption of an industry based code for health claims with the proviso that all regulators support and recognise such a Code, including the Australian Competition and Consumer Commission (ACCC).

An alternative approach may be to incorporate the Code of Conduct, including the definition for “Fat Free” and “No Fat, into the regulation and ensure consistency of regulations. The reason for this suggestion is to ensure all regulators have a consistent approach to this issue (including the ACCC).

This is the suggestion Fonterra has made to FSANZ in their May 2007 submission on preliminary final assessment Health Claims P293 in relation to “Fat Free” and “No Fat” claims (excerpt from submission below).

#### **“Fat Free” and “No Fat” Claims**

Fonterra notes the table to clause 11 in the pFAR (pgs 163 – 170) which has stipulated the requirements for “Low Fat” but has not stipulated the requirements for “Fat Free” and “No Fat” Claims.

At present many food companies including dairy companies make “No Fat” and “Fat Free” Claims under CoPoNC provisions, which allow for a level of no greater than 0.15g/100g total fat and a cholesterol level of no greater than 3mg/100g. From a public health perspective the clinical significance of the amount of fatty acids rather than no fatty acids is the concern. International regulators including CODEX (*Codex alimentarius*) allow for the levels of “non significant” levels of fat when making “Free” claims.

Fonterra suggests FSANZ retain the “Free” classification with regards to fat, based on the current CoPoNC standard, and this be incorporated into the Food Standards Code.

## **FOOD LABELLING STANDARDS**

Food labelling should provide information to allow consumers to make informed choices.

Fonterra agrees with the FSANZ study cited in the VCEC Draft Report which concluded that many consumers are confused by information on food labels. For example many consumers do not understand the difference between percentage daily intake (%DI) and the recommended dietary intake (%RDI).

There is a message in the April 2007 Draft Report in the quote from Ippolito & Poppalardo 2002 which states... *there is a finite amount of information on labels that people can absorb and that the provision of more and more information can be counter productive.*

Labelling to meet constantly changing regulatory requirements also imposes costs on industry.

*Mandatory* labelling should only be required for issues pertaining to food safety. Mandatory labelling should not be expanded to meet objectives beyond food safety such as environmental issues, public health messages, animal welfare, food miles etc. This is not to say that companies may not voluntarily introduce information on these issues to consumers through labels and other materials such as brochures, end of aisle retail displays, websites, media etc. As indicated by the comments from Consumer Affairs Victoria, *if consumers really want an attribute and are prepared to pay more than it costs to supply, the market will generally supply it without government intervention.*

Fonterra agrees with the VCEC recommendation that food safety is the key priority for food regulations and the criterion for mandatory labelling should meet this objective.

Voluntary labelling is the preferred policy. For example, Fonterra supports the recent FSANZ preliminary assessment for Health Claims P293 proposal that proposes the option of voluntary labelling of trans fats –

### **Saturated and Trans Fatty Acid Claims**

#### ***FSANZ proposes option 2***

- ***Trans and saturated fatty acids considered in the conditions for low and reduce saturated fatty acid claims;***
- ***Trans and saturated fatty acids considered in the conditions for low and reduced saturated and trans fatty acid claims;***
- ***Conditions prescribed for ‘reduced’ trans fatty acid claims (including no increase in saturated fatty acid levels);***
- ***Conditions prescribed for the ‘free in trans fatty acid’s claim and the ‘free in saturated fatty acids’ claim, including both levels of fatty acids;***
- ***Claims about ‘low trans fatty acids and ‘x% trans fatty acid free’ expressly prohibited;***
- ***And voluntary declaration of trans fatty acids in the nutrition information panel***

Fonterra endorses the concept of this proposed option with strong support for voluntary declaration of trans fatty acids in the nutrition information panel (NIP).

### **Country of Origin labelling**

The cost benefit analysis of Country of Origin Labelling (CoOL) by the Centre of International Economics (CIE) indicated the costs outweighed the benefits (the Office of Regulation Review found that the CoOL Regulatory Impact Statement (RIS) failed the Council of Australian Governments (COAG) requirement that the benefits of introducing the standard outweigh the costs). Also it could be argued that CoOL is not a food safety issue which may be why New Zealand chose to opt out of introducing CoOL. Fonterra supports the VCEC and the Banks review recommendation that the relevant food standard for CoOL be reviewed. Fonterra also endorse the suggestion by the VCEC that this review’s terms of reference be expanded to include a review of the entire standard.

Fonterra endorses the suggestion in the VCEC Draft Report that alternatives to labelling standards need to be considered in relation to the policy objective of safeguarding public health in relation to food consumption – ie tackling the obesity problem.

## **THE STANDARDS AMENDMENT PROCESS**

Fonterra supports the VCEC Draft Recommendation 7.2:

*That the Victorian Government support improvements in the governance arrangements for the Australian New Zealand Food regulation Ministerial Council to increase the timelines of decision making and the scope for Australian business to capture the benefits of innovation. Improvements could be achieved by:*

- *The Ministerial Council focusing on providing policy guidance and ratification of standards, leaving technical decision making and proposals on standards to Food Standards Australia New Zealand; and*
- *Two or more jurisdictions agreeing to a review of the Food Standards Code before it can proceed. Those jurisdictions requesting a review must also publicly release their reasons and meet the cost of the resources used in undertaking the review.*

It should be clearly defined that a key role for FSANZ in this process is to assess the various options which would meet the policy objectives of MinCo. This would include FSANZ undertaking a cost benefit analysis (drawing on the relevant expertise including the knowledge of other agencies and external specialists) of the various options to achieve the policy outcomes. This may even mean non regulatory approaches are the preferred option.

## **MISLEADING AND DECEPTIVE CONDUCT**

Fonterra endorses the comment in the VCEC Draft Report that *there is potential for overlap or gaps in regulatory coverage because of multiple regulators*. Clarification of roles, alignment of legislation and policy consistency in the regulation are desirable to ensure a clear operating environment for all stakeholders. This comment relates to not only regulation in the consumer area (*Trade practices Act 1974, Fair Trading Act 1999 (Vic)*) but extends to regulations such as the Food Standards Code, *Food Act 1984 (Vic)* and the equivalent legislation in each of the jurisdictions.

Fonterra supports the Draft recommendation 7.4:

*That the Victorian Government update the management of its approach to addressing misleading and deceptive conduct in Victoria by:*

- *Pressing for the development of guidelines outlining the scientific information that Food Standards Australia New Zealand can provide to the Australian Competition and Consumer Commission (ACCC) to assist it to pursue its legislative objectives;*
- *Consumer Affairs Victoria updating its memorandum of understanding with the ACCC for misleading and deceptive conduct, including communication and enforcement protocols; and*
- *Consumer Affairs Victoria developing (in the revised memorandum of understanding for Victorian regulators) protocols to help local government enforce that part of the Food Act 1984 (Vic) relating to misleading and deceptive conduct.*

## **MAXIMUM RESIDUE LEVELS**

Fonterra supports the Draft Recommendation 7.5:

*That the Victorian Government support the adoption by Food Standards Australia New Zealand and the Australian Pesticides and Veterinary Medicines Authority of*

*a more risk based approach to maximum residue limit requirements and the harmonisation between the various maximum residue limit requirements.*

## **WEIGHTS AND MEASURES**

Australian weights and measures standards should align with international standards. The Average Quantity System (AQS) with its 3 rules (as detailed on page 176 of the VCEC Draft report) provides for an efficient and equitable method of identifying short measure in prepacked articles and aiding fairer dealings between business, and a more effective means of protecting consumers against irregularities in the measurement of goods sold.

Fonterra supports the Draft Recommendation 7.6:

*That through the Ministerial Council on Consumer Affairs, the Victorian Government support greater progress on the average quantity system and possible amendment to the uniform trade measurement legislation to align Australia with overseas trading partners, within six months of the release of the VCEC's final report.*

## **6. IMPROVING THE REGULATORY FRAMEWORK: STATE GOVERNMENT ISSUES**

The VCEC Draft Report has proposed 7 Draft Recommendations in relation to Improving the Regulatory Framework: State Government Issues. Fonterra supports in principal each of these recommendations. Consistency in the interpretation and administration of food regulation by regulators would contribute to enhanced clarity for manufacturers. Fonterra is a multi-site manufacturer with many suppliers. The company has products sold across not only Victoria but all other Australian jurisdictions. Nationally consistent regulations will assist to ensure obligations are met throughout the process and supply chain.

Regulatory bodies such as Dairy Food Safety Victoria (DFSV) and Primesafe have considerable expertise in the industries which they currently regulate. Progress has been made in further developing a working relationship between DFSV and the Australian Quarantine and Inspection Service (AQIS). Fonterra supports this initiative and encourages working towards further alignment with dairy Industry regulators nationally. Fonterra fully supports initiatives that contribute to reducing the audit burden on businesses whilst upholding food safety objectives. Fonterra supports proposed model Figure 8.1 Accountability and the food safety framework on page 206 of the VCEC Draft Report on the basis that DFSV is retained, and the MOU is strengthened.

## **7. IMPROVING FOOD REGULATION: REGULATORY INSTRUMENTS**

Fonterra supports the principle of aligning Victoria's food regulatory instruments with national standards, however to provide confidence in product safety and quality will continue to require manufacturing sites, suppliers and co-packers to utilise accredited food safety and quality systems audited by category specific

RABQSA registered auditors. Fonterra does not stipulate any particular standard for suppliers and co-packers, however outlines the components that must be covered by accepted certification which include staff training requirements. Fonterra encourages initiatives by all regulators to evaluate accredited food safety and quality systems with the view of establishing recognition programs. Such programs closely managed by the regulatory body, ideally operate in conjunction with registration processes with the objective to reduce audit duplication. Careful management of any recognition programs would be required to ensure that any MOU that currently exist with countries to which products are currently exported are not jeopardised in any way.

Fonterra supports the principles of a risk based approach to audit frequencies in such a way as is consistent with national guidelines by all regulatory bodies.

In relation to food sampling management as per Draft Recommendation 9.4 on page 243 of the VCEC Draft Report, sampling results could be further utilised by industry if broad industry specific reports were provided to manufacturers to increase awareness of food safety issues that may be emerging in their industry.

## **8. CONCLUSION**

A regulatory regime which is streamlined, with roles clearly defined, legislation aligned to the objectives with the key priority of food safety and consistent implementation/enforcement of regulations, will benefit consumers, industry, the community and the regulators. Fonterra supports the suggestion by the VCEC that Victoria play a stronger role in influencing the national food regulation framework to ensure national standards which yield efficient outcomes in terms of food safety and quality, whilst minimising the compliance and administration costs and allowing companies to innovate to meet market demands for innovative food products.

Fonterra also supports the suggested reforms to the state based regulation system including the changes to the state regulatory framework and the regulatory instruments outlined in the Draft Report.