

**ANNUAL REVIEW OF REGULATORY BURDENS ON BUSINESS  
MANUFACTURING AND DISTRIBUTIVE TRADES  
Productivity Commission Draft Research Report**

This submission by the Department of Agriculture, Fisheries and Forestry (DAFF) is in response to the Productivity Commission Annual Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades draft research report.

Australia's food regulatory system involves three elements – setting food regulatory policy; developing standards; and implementation and enforcement of these standards – and three levels of government – Australian and New Zealand Commonwealths, Australian state and territory governments, and local governments.

DAFF is the Australian Government department with responsibility for industries that span the food supply chain, from agriculture to food processing. DAFF jointly shares responsibility with the Department of Health and Ageing (DoHA) for food regulatory policy within the Australian Government.

The food industry is highly regulated in terms of food safety and provision of consumer information, reflecting domestic community expectations with respect to the food they consume. The industry is also subject to international standards.

The food industry is Australia's largest manufacturing sector. It accounts for around 18 per cent of employment in manufacturing and is also a major employer in rural and regional Australia. Despite severe droughts, a strengthening Australian dollar, and rising input costs, Australia remains a significant net exporter of food, with exports valued at around \$23 billion in 2006-07. The efficiency and effectiveness of the food regulatory system has a significant impact on the competitiveness of this industry and the wealth of the nation.

Reforms in the food regulatory system would benefit businesses, not-for-profit organisations, and consumers by leading to lower compliance and administrative burdens; improving international competitiveness of the industry; and potentially facilitating additional investment in the industry. Given the size and significance of the industry to Australia, the benefits of any reforms in this area could be considerable.

**Context**

Prior to the establishment of the National Food Authority (NFA) in 1991, food in Australia was regulated by the individual states and territories. In 1991, the Australian states and territories decided to adopt a national approach to food standards and food hygiene recognising interstate trade and the need for Australia to trade overseas as a single entity. It also recognised that economies of scale in regulation could be achieved if a national approach was adopted.

In 1996, a treaty was signed with New Zealand to harmonise food standards resulting in the NFA changing to become the Australia New Zealand Food Authority (ANZFA), a bi-national body working with ten jurisdictions - the Australian and New Zealand Governments and the governments of the eight Australian states and

territories. The treaty covers most, but not all aspects of food regulation. For example, New Zealand continues to have autonomous responsibility for matters of food safety.

Changes to the food regulatory system in 2002 saw the inclusion of primary industries ministers and other ministers with an interest in the food regulatory system on the Australia New Zealand Food Regulation Ministerial Council (Ministerial Council). This was accompanied by a separation of the regulatory policy making from the technical standard setting process. Food Standards Australia New Zealand, ANZFA's successor, was established by the *Food Standards Australia New Zealand Act, 1991* to develop joint standards covering the entire food supply chain.

DAFF recognises that although Australia's food regulatory system has improved since changes were incorporated in 2002, inefficient and inconsistent regulations continue to frustrate industry and government stakeholders. DAFF makes the following comments in response to the Productivity Commission's recommendations in Chapter 3 of the Annual Review of Regulatory Burdens on Business - Manufacturing and Distributive Trades draft research report (the PC report).

### **Concern – Inconsistency in food regulation**

#### **Draft Recommendation 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.**

DAFF does not consider a further review of the consistency of food regulation is necessary – the reviews to date indicate a need to improve consistency of food regulation and there are a number of practical measures that could be implemented to achieve improvements. In particular, the food industry has identified inconsistent interpretation and enforcement of food standards by states and territories as a key area of concern.

#### *Enforcement*

Inconsistent *interpretation* of standards by states and territories results in jurisdictions *enforcing* standards differently. The inconsistent enforcement of standards causes regulatory uncertainty along the value chain of the food industry, from paddock to plate, particularly those companies operating across jurisdictions.

Additionally, the inconsistent interpretation and enforcement creates an uneven playing field whereby some companies in one jurisdiction may be able to operate more cheaply or easily than their counterparts in other jurisdictions.

Improvements in consistent interpretation and enforcement may be achieved by one or more of the following:

- (a) the Australian Government could be assigned the responsibility for enforcing those food standards that can be enforced once nationally (e.g. labelling and

composition). The role of the Australian Competition and Consumer Commission (ACCC) could also be expanded to work cooperatively with its state and territory counterparts to standardise the monitoring and enforcement of food labelling requirements at the national level.

Under this option, the role of state and local governments in ensuring food hygiene standards covering premises and other production and processing facilities are met, would be maintained.

- (b) incentive or disincentive schemes could be established to encourage consistent enforcement of food standards.

### *Legislation*

Inconsistent legislation covering production, processing and sale of food across jurisdictions creates confusion for industry, particularly for those businesses that operate across borders.

In 2000, the Council of Australian Governments signed an Inter-Governmental Agreement (the Food Regulation Agreement – FRA), agreeing to an enhanced food regulatory system. These new arrangements came into effect in 2002.

The FRA includes Annex A containing offences relating to food and emergency powers and Annex B containing inspection and seizure powers, improvement notices and prohibition orders for premises or equipment, taking and analysis of samples, auditing, notification and registration of food businesses and approval of food premises, administration, procedural and evidentiary provisions. States and territories are required to introduce food legislation that is either identical or consistent with the terms contained in Annex A. The provisions contained in Annex B are not mandatory.

An unpublished review in July 2007 comparing the consistency of Food Act provisions throughout Australia found that most Annex A provisions are included with little or no change to the wording in jurisdiction legislation. However, the Annex B provisions are not being included in jurisdiction legislation in a consistent manner.

More nationally consistent legislation across all jurisdictions could reduce the unnecessary regulatory variations and would reduce the regulatory burden to industry.

One option to improve consistency of food legislation could be to amend the Food Regulation Agreement to provide that Annex B provisions be adopted in the same way as Annex A provisions.

### **Concern - Delays and difficulties in implementing and amending food standards**

#### **Draft Recommendation 3.2**

**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.**

DAFF agrees the process for amending and developing standards should be independently reviewed two years following implementation. Additionally, DAFF considers that the standards development process would be improved by

implementing an integrated system for developing standards and national implementation guidelines.

The food industry has consistently indicated concerns about the length of time it takes to develop and/or amend food standards. Recent changes to the FSANZ Act will potentially cut down the time taken for standard non-complex standard development/amendment processes.

Currently there are two opportunities for the Ministerial Council to seek a review of a new draft food standard or a draft amendment of a food standard contained in the Australia New Zealand Food Standards Code (the Code). The first review may be sought by a single jurisdiction and must be made within 60 days after the notification of the approval or amendment of a draft variation to the Code by the FSANZ Board. FSANZ is required to undertake the review in 3 months (unless otherwise agreed) and notify the Ministerial Council of its decision. The Ministerial Council can call for a second review within 60 days of notification of the outcomes of the first review. A second review requires the support of a majority of jurisdictions.

Upon implementation of the new arrangements, a single review can be sought by one jurisdiction. Changes to the review-seeking process will shorten the timelines for the review process, but the changes may not have an impact on the number of reviews sought.

In terms of improving consistent implementation of standards, particularly with respect to primary production and processing standards, the Implementation Sub Committee (a subordinate committee of the Ministerial Council) has developed a model for an integrated system for standards development and consistent implementation.

Under the model, the Ministerial Council will receive the draft standard, an implementation plan and a Regulatory Impact Statement as a single package for consideration. Currently the Ministerial Council considers draft standards in isolation from implementation plans.

The Ministerial Council will consider this draft model after it has been piloted and evaluated.

## **Concern – Inefficient operations of the Australia New Zealand Food Regulation Ministerial Council**

### **Draft Recommendation 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. 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, 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.**

DAFF agrees that the Ministerial Council operations could be improved to better align with the *Council of Australian Governments Best practice regulation: A guide for ministerial councils and national standard setting bodies* (October 2007).

The Ministerial Council, assisted by its subordinate committees, develops domestic food regulation policy in the form of policy guidelines. The Ministerial Council comprises Ministers from all Australian states and territories as well as the New Zealand Government. Each member is required to bring a "whole of government" view to the Ministerial Council. In practice, there can be differences in approaches of health and agriculture/primary industries portfolios in regard to food regulation. Most of the lead Ministers on the Ministerial Council are health Ministers and food regulatory policy is often considered in the context of wider public health policy. A similar trend follows with respect to Ministerial Council endorsement of food standards.

Ministerial Council decisions are made by consensus, or if that is not achievable, then by a majority vote. The sovereign governments of Australia and New Zealand have the same voting power as the Australian states/territories; and those jurisdictions with relatively little food production, processing and/or consumption have the same voting power as jurisdictions with greater food industry participation. These voting arrangements contribute to a decision-making process that, if consensus cannot be achieved, can result in outcomes that do not reflect the relative impact of decisions on industry or jurisdictions and potentially increase regulatory burden on the majority of industry and/or consumers.

### **Concern – Problems in the regulation-making process**

#### **Draft Recommendation 3.4**

**The agreed 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.**

DAFF supports measures that protect public health and safety and are commensurate with the identified risk. Regulatory measures should be developed according to the Principles of Best Practice Regulation as stipulated in the *Council of Australian Governments Best practice regulation: A guide for ministerial councils and national standard setting bodies* (October 2007). The agreed measures should reflect the principles of minimum effective regulation and ensure the outcome that generates the greatest net benefit to the community.

ANZFRMC was asked by COAG to identify outstanding issues from various reviews into Australia's food regulatory system, including the Review of the Food Regulation Agreement, and to make recommendations for potential changes to the FRA as appropriate to address them. It is expected that COAG will consider the draft paper recommending potential changes to the FRA in December. The recommendations cover three areas:

- Better governance, efficient processes and increased transparency;
- Improving consistent implementation and enforcement of food standards; and
- Legislative reform to simplify the system

## **Concern – Public health issues being addressed through food regulation**

### **Draft Recommendation 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.**

DAFF agrees that health issues should be considered by health Ministers before being considered by food Ministers. However in doing so, it is important to establish clear lines of responsibility and decision-making boundaries between the ministerial councils.

Improved liaison could potentially occur with other ministerial councils. For example, the Ministerial Council of Consumer Affairs, or the Primary Industries Ministerial Council may contribute different views to issues considered by the Food Regulation Ministerial Council.

### **Other issues**

#### *International harmonisation*

International harmonisation is becoming an increasingly important issue in the realm of food regulation as global market participation grows. DAFF continues to participate in international forums such as Codex Alimentarius to influence international standards-setting processes, and to improve harmonisation of Australian and international regulatory systems.

*The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (Treaty)* promotes a harmonized food regulatory environment between Australia and New Zealand enabling unrestricted trade between the two countries. Therefore, it is important that the Treaty remains current, effective and resolves areas of inconsistency in the regulatory treatment of similar foods across the Tasman.

## **Conclusion**

The food regulatory burden on industry can be reduced through implementing the measures outlined above either singly or as a raft of measures. Addressing these key areas of consistency and governance in the food regulatory framework will assist in alleviating the regulatory burden on industry. An improved food regulatory system would enable a more competitive and innovative food industry. More efficient and effective food regulation would also encourage greater investment in the food industry in Australia and slow the off-shore migration of food manufacturing in particular.

DAFF thanks the Productivity Commission for this opportunity to make a submission to the Draft Research Report on the Annual Review of Regulatory Burdens: Manufacturing and Distributive Trades.

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