



SUBMISSION

SUBMISSION TO THE
Productivity Commission

IN RESPONSE TO

Issues Paper – “Annual review of Regulatory Burdens
on Business – *Manufacturing & Distributive Trades*”

February 2008

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AUSTRALIAN BEVERAGES COUNCIL LTD

SUITE 4; LEVEL 1, 6-8 CREWE PLACE ROSEBERY NSW 2018



Index:	Page
Recommandations	3
Preface	4
Introduction	5
The Food Regulatory System & Policy Formulation	6
Nutrient Profiling	10
State Regulations – Government Premises	12
Food Safety & Hygiene Regulations	13
Membership	Appendix

Recommendations

The Beverages Council recommends that:

1. The current Food Regulatory System should be reformed to provide:
 - a. That the Commonwealth & State Parliaments amend the Food Act to remove the power from the ANZ Food Regulations Ministerial Council (ANZFRMC) to amend Standards submitted for approval by FSANZ or to promulgate new Standards without prior recommendation from FSANZ. The powers of the ANZFRMC should be limited to:
 - i. Reject a proposed standard
 - ii. Refer a proposed standard for reconsideration (once) only and then either approve or reject such a Standard.
 - iii. Provide an affordable appeal mechanism to allow small to medium enterprises an appellate process other than the Supreme Court.
2. Adoption of a uniform set of national food safety regulations.
3. The Commission consider the implications of proposed regulations that would see the mandatory nutritional profiling of packaged food and beverages.
4. The Commission consider the market distortions being introduced by State Governments' restrictive regulations on food & beverages sold in public health outlets and potentially other Government owned public facilities and premises.



Preface

The Australian Beverages Council is the peak national association of non-alcoholic water and juice based beverages. This submission incorporates the views of our national membership as well as those of the Australasian Bottled Water Institute Inc (ABWI).

Our range of products includes:

- Carbonated soft drinks
- Cordials & other beverage concentrates
- Energy Drinks
- Fruit drinks and fruit juices
- Sports & Isotonic Beverages
- Spring, mineral and other packaged waters
- Other still, vitaminised water & juice based, beverages

Our membership spans the continent from the largest national bottlers to small regional operators & distributors.

The fundamental objective of the Australian Beverages Council is to present a unified voice for the non-alcoholic beverages sector to Government at all levels, the media and our stakeholders in the general community.

The Australasian Bottled Water Institute is the primary certification organisation for water bottlers in Australia, New Zealand and the Pacific Islands. Its voluntary Model Code, a code of good manufacturing practice, is mandatory for members with a requirement that bottlers be independently audited to it once a year for compliance.

The Code is approved by the International Council of Bottled Water Associations and complies with the International “default” Model Code.

A membership list of the two organisations is attached at Appendix A.



Introduction

This submission is lodged by the Australian Beverages Council Ltd (*Australian Beverages*) on behalf of its members and the Australasian Bottled Water Institute (ABWI).

The Boards of the *Australian Beverages* and ABWI welcome this opportunity to make a submission to the Productivity Commission in response to the “*Issues Paper – Annual review of Regulatory Burdens on Business – Manufacturing & Distributive Trades, February 2008*”.

The Food Regulatory System & Policy Formulation

Today, calls for additional food regulations are presented as either meeting the wants of “consumers” or “health needs”. It is we believe worthwhile to recall that the first food regulations were in fact introduced at the behest of the food sector to protect ethical food producers from the practices of traders that adulterated or “watered” down foods in order to increase their profitability.

“Regulation” in the food and beverages industry, although essential to protect public health & safety, is not an objective end in itself and additional regulations will not of themselves either provide greater protection or reduce costs to consumers nor provide the silver bullet for a “healthier” population.

The current Australian Food Regulatory Policy Formulation system is a product of Australia’s early State based food regulations.

Without doubt, Australia has made considerable progress since then and with the advent of the Blair Review and implementation of many of its recommendations we have progressed further.

The implementation of the Blair Review recommendations separated policy development from standards setting. This has however created a new set of delays in the system that has impacted negatively on beverage bottlers and marketers.

Although the original purpose of the Blair Review in 1998 was to simplify food regulation in Australia and New Zealand, the operation of the new system has accumulated excessive red tape and poor delivery in commercial time frames, disadvantaging industry without generating the benefits consumers and government(s) deserved from the reforms.

In particular whenever:

- State jurisdictions decide that a matter before FSANZ should be subject to a “new policy” direction, or
- If FSANZ chooses of its own accord to refer matters for policy development after an Application has been lodged, or
- The ANZFRMC decides to institute a policy review - this invariably results in considerable delays and potential market losses for Australian business.

Currently this delay is in theory limited to eighteen months (18 months), an inordinately long period of time that impacts negatively on commercial outcomes.

Whilst the FSANZ process is both transparent and consultative, the lack of transparency

in the Policy Formulation process through the Food Regulations Standing Committee (FRSC) has also the potential for obfuscation by policy advisers.

This is often based on the claim that policy development is one for the Food Regulation System Secretariat based in the Department of Health in Canberra when in fact States & Territories jurisdictions, through their membership of the Food Regulations Standing Committee (FRSC) have the ability to create considerable delays and frustrate the system when policy outcomes become 'philosophical' issues rather than safety issues.

The ad-hoc consultation process implemented after the Blair Review and contrary to the Blair recommendation; has made the process even less transparent and therefore less accountable by its key government stakeholders.

Appeals Against ANZFRMC Decisions.

The current system does not provide any avenue for an applicant to appeal against decisions of the ANZFRMC other than the Supreme Court.

This puts any challenges to arbitrary decisions beyond the scope of even the largest food & beverage firms.

An appeal process through the Administrative Appeals Tribunal should be incorporated into the Food Act.

The Role of the States & Territories

State & Territories jurisdictions have prime responsibility for ensuring a safe food supply.

This is done through the respective inspectorial agencies and in Victoria at local Government level.

Within the context of the Food Regulations system, State Ministers are called upon to make policy decisions through the Food Regulations Ministerial Council (FRMC). These decisions can be arrived at by simple majority vote.

The current arrangements have proved ineffective in achieving the objectives of the Blair Review as adopted by COAG. In particular:

- Territories jurisdictions have the same voting power as the Australian sovereign states, yet contribute negligent amounts to the cost of running the Food Regulations System and FSANZ.
- States and Territories with small populations and with only small food & beverages manufacturing sectors can frustrate the needs of the larger states i.e. Victoria and NSW where our food and beverages manufacturing industries are primarily based.

- The Commonwealth and NZ Governments have the same voting power as the smallest jurisdictions and the Territories, even though the latter are subsidiary jurisdictions to the Commonwealth.
- FSANZ has been established as the primary food science standard setting authority. These food standards are arrived at after exhaustive risk assessments and must take into consideration ANZFRMC policy, Australia's obligations under international treaties and the *Codex Alimentarius*. The FSANZ system is properly required to be transparent in its operations and provision is made within the Act for all stakeholders to express their views. It should be noted however, that FSANZ although correctly required to note the above policies and *Codex* is not obliged to comply with either in the development of Food Standards recommended for adoption.
- The ANZFRMC is the only ministerial council that is asked, in addition to policy setting, to review every single regulation developed by FSANZ and to eventually approve it by majority vote if need be. A single jurisdiction can seek a review – this usually delays the finalization of a regulation by at least 90 days. After that a majority of small states and territories can reject a regulation by outvoting the combined support for such a regulation by the Commonwealth, New Zealand, Victoria and NSW. If it is suggested that a policy needs to be developed to cover an application, this can take up to an additional two to three years although the statutory period is eighteen (18) months.
- The Blair Review's recommendation that a Consultative Committee representing stakeholders be established to advise the FRMC has been sidelined in favour of ad-hoc consultative mechanism that can often be manipulated leaving only the Food Regulations Standing Committee (officials) as the advisory vehicle to the ANZFRMC.

Australia is a single market and the food and beverages sector is on the one hand encouraged to be innovative and export oriented and on the other hand is stymied by a system that not only has in-built delays but is also open to artificially generated delays where philosophy contradicts with the business community's needs for innovation and progressive market developments both locally and overseas.

The Australian Beverages Council is a member of the Australian Chamber of Commerce & Industry (ACCI) and subscribes to the ACCI's Food Regulations Policy. A Copy of the policy is attached as Appendix B.

The Beverages Council refers the Commission to the copy of our submission to the VCEC which details case studies with regards to the Council's applications for a standard for formulated beverages and permission to voluntarily fluoridate bottled water and the operation of "editorial notes" as examples of the inefficient operations of the current food regulatory system.

The Beverages Council recommends that the current Food Regulatory System should be reformed to provide:

- That the Commonwealth & State Parliaments amend the Food Act to remove the power from
 - The ANZ Food Regulations Ministerial Council (ANZFRMC) to amend Standards submitted for approval by FSANZ or to promulgate new Standards without prior recommendation from FSANZ. The powers of the ANZFRMC should be limited to:
 - Reject a proposed standard
 - Refer a proposed standard for reconsideration (once) only and then either approve or reject such a Standard.

Nutrient Profiling of Packaged Food & Beverages

There has been a recent call by health consumer NGOs for the introduction of nutrient profiling of products ostensibly to assist consumers into making healthier choices and thus fight the reported rising incidence of overweight and obesity in the population.

The ANZFRMC has commissioned a study on nutrient profiling with the view of introducing a mandatory system of so-called “traffic lights” labelling that would categorise all major nutrients in a food and beverage as either:

- “Green” - Good for you
- “Amber” - Neither good nor bad
- “Red” - Bad for you

This would see a can of soft drink categorised as red as its major nutrients are water and sugar. Although the dietary impact of soft drinks sweetened by intensive low caloric sweeteners is negligible, the proposals being investigated by the NZFRMC would result on such products as also being labeled as “red” as they are seen to “discourage” the consumption of healthier products such as milk and encourage consumption of accompanying foods deemed “healthier”.

Summary Position on Nutrient Profiling

The Australian Beverages Council does not oppose the use of nutrient profiling to assist the formulation or selection of foods suitable for balanced diets constructed to prevent or promote defined health and wellbeing outcomes of specific population groups. We do however oppose the use of nutrient profiling initiatives that are targeted at the general population with no specific population health outcome identified.

This policy position by the Beverages Council has been arrived at in response to the increasing, inappropriate use of Nutrient Profiling schemes to restrict the sale and promotion of food products to the general population by regulators and other organisations.

The schemes classify foods as ‘healthy’ or ‘unhealthy’ on the basis of their nutrient profile. Such good food/ bad food ‘traffic light’ approaches run contrary to nutritional wisdom and have no sound, scientific basis for general healthy eating advice. More importantly they downplay the importance of individuals taking responsibility for their own health through a whole of diet approach, and may be harmful by implying that ‘healthy foods’ may be consumed without regard to moderation and balance.

Furthermore, imposing artificial regulatory boundaries on nutrient levels may pull the focus of industry innovation from health promoting food products onto compositional manipulations to gain permission to sell or market. In the longer term this may limit dietary options benefiting consumer health.

Eating healthily requires knowledge of nutrition and the role of foods in healthy lifestyles. Limiting the promotion and availability of foods in primary school canteens is appropriate as primary school age children are neither skilled, nor responsible enough, to select healthy diets.

The Beverages Council supports nutritional profiling as the basis for dietary advice or to discriminate between food products for sale or promotion through self or full regulatory measures when:

- the proposed outcomes are well described and substantial enough to warrant intervention;
- sound evidence is presented that there is a good chance of success; and

Other potential regulatory measures to achieve the same outcome have been fully considered and discounted as being inappropriate, ineffective or impracticable.

The Beverages Council strongly opposes regulatory nutrient profiling regimes when they are:

1. targeted at the general population with no specific population health outcome identified;
2. based on an unsound “good food/bad food” approach, rather than supporting the healthy, balanced diet approach;
3. applied inflexibly with a single set of nutrient levels across broad categories;
4. unable to take into consideration changing understanding of nutrition;
5. restricting consumer choice and information through the banning of promotion and sale of particular food products, except in special circumstances such as primary school canteens; or guidelines appropriate to diets are applied to individual foods

<p>The Beverages Council recommends that the Commission consider in its review this proposed regulatory restriction and advise Governments of its potential negative impact on product development and trade for what amount to unknown public health outcomes.</p>

Regulatory Restrictions in Government Facilities

The State Governments of NSW, Queensland, South Australia and Western Australia have all announced and begun implementing regulatory restrictions on food products sold either by way of vending machines or through privately operated food service businesses and retail shops.

These announced restrictions currently being implemented or proposed for public health hospitals and other such facilities would see either the removal from sale or restrictions on the sale of a wide range of food and beverages.

The rationale behind these proposals is that, given the reported increase in community overweight & obesity levels, health service facilities should only make available “healthy” foods or, as an alternative restrict the availability and merchandising of food and beverages considered as unhealthy.

Aside from the fact that each State has different regulations which impedes innovation due to the prohibitive costs of developing by products to suit each state, these proposals impact on the right of the consumer, be they staff of these facilities, visitors or patients to the choice of buying and consuming food and beverages which, if not sold within these facilities would be otherwise be freely available to them.

Putting aside the likely negligible impact of these regulations on the levels of obesity in the community, the logical flow through would see extensions of these policies to other State and Federal Government run facilities such as correctional centres, railway stations and Government offices.

I refer the Commission to the joint public submission to the SA Government – titled: The Coca-Cola System Response to Discussion Paper “Healthy Food in South Australian Health Facilities” of April 2008, by Coca-Cola South Pacific Pty Ltd and their bottler, Coca-Cola Amatil Ltd.

The implications of a set of regulations providing for appointed official and other individuals, profiling foods and determining what are otherwise safe, legal and otherwise freely available food and beverages, may or may not be sold in a wide range of environments, have enormous implications for the business community.

<p>The Beverages Council urges the Commission to examine these regulations and their potential implications to Australian food manufacturing and retailing businesses.</p>
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Food Safety & Hygiene Regulations

Food safety is a given. The beverage industry is committed to a safe beverages market for our consumers. However, the development of separate food hygiene regulations by individual states and territories has resulted in differing application of those rules. These discrepancies are costly as they force national multi-plant companies to institute different rules and procedures in each state or territory where a plant may be located and differing and/or more complex training programs, given that national companies require flexibility in the employment of their staff throughout their areas of operations.

The recent changes to the Queensland Food Act 2006 mean that Queensland has differing requirements with respect to tampering provisions. The ABCL has in place a national recall reporting protocol with appropriate contacts for all states, commonwealth and territories health authorities. These are no longer applicable to Queensland.

Local governments increasingly check labelling compliance of branded products. The advice is then passed on through the retailer to the manufacturer. Apart from the economic inefficiency of such arrangements we often find that different states “cherry pick” which non-safety regulations they choose to police depending on available resources.

An example of this is “Country of Origin” labelling. CofO is strictly enforced in some states and not in others.

The FRSC established a sub-committee on “Implementation” charged with ensuring uniform compliance. By all accounts this Sub-committee has not been effective in fulfilling its objectives.

<p><i>Australian Beverages</i> recommends in favour of the development and implementation of uniform - national food safety & hygiene regulations.</p>
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END

MEMBER COMPANIES

ABN Amro Australia
 AET Films Inc.
 Air Liquide Australia Limited
 Alchemy Cordial Company
 Alpine Beverages Pty Ltd
 Aluminium Can Group
 AMCOR
 AMEC Plastics
 AQUA Cooler Pty Ltd
 Aqua-Cool Limited
 Aquafill Pty Ltd
 Pty Ltd
 Aquaqueen Australian Spring Water
 Aquatek Products Pty Ltd
 AgriQuality
 ABECS Pty Ltd
 Aygee Gippsland Pty. Ltd.
 Beaudesert Soft Drinks
 Bertshell Pty Ltd
 Bevco Pty Ltd
 BevTech Consulting
 Big Springs Riverina
 Big Wet Natural Spring Water
 Black Hill Pty Ltd
 Blue Mountains Natural Spring Water
 Bickfords Australia Pty Ltd
 BOC Limited
 Brickwood Holdings Pty Ltd
 Brooke-Taylor & Co.
 Bundaberg Brewed Drinks Pty. Ltd.
 Bundaberg Sugar Ltd
 Byron Drinks
 Cadbury Schweppes (Aust) Pty. Ltd.
 Cantarella Bros. Pty Ltd
 Cascade Beverage Company
 CHR Hansen
 Clearwater Filter Systems
 Coastal Springs Pty Ltd
 Coca-Cola Amatil Ltd
 Coca-Cola South Pacific & Korea
 Cooks Soft Drinks
 Cooroy Mountain Spring Water Pty Ltd
 Cormack Packaging Division
 Crestbrook Mountain Springs
 Crows Nest Cordials Pty Ltd
 Crystal Springs Bottled Water
 Cuno Pacific Pty Ltd
 Domnick Hunter Pty Ltd
 Eastcoast Beverages
 Ecolab Pty Ltd
 Ed Ten Water
 Eden Heavenly Springs
 Elkay Pacific Rim (M) Sdn Bhd
 Firmenich Ltd
 Fosters Australia
 Frucor Beverages Ltd
 Full View Plastics
 Functional Packaging Solutions
 Givaudan Australia Pty Ltd
 Golden Circle Ltd
 HBM Plastics & Technologies Pty Ltd
 Hidell-Eyster International
 Hopes Goulburn Cordials Pty Ltd
 Huhtamaki Australia Ltd
 International Flavours & Fragrances (Aust) Pty Ltd
 IQ Beverages
 Jalco Food & Beverages
 Johnson & Johnson Pacific
 Jolt Corporation Australia Pty Ltd
 Juicy Isle Pty. Ltd.
 Kerry Ingredients
 KHS Pacific Pty. Ltd.
 Larglen Pty Ltd
 Lillyman Bros
 Lithgow Valley Springs
 Macca Industries
 Macquarie Bank
 Manildra Harwood Sugars
 Mead International Ltd
 Millipore Australia Pty Ltd
 MeadWestvaco
 ML McPherson's Consulting
 Mountain Spring Water Co., Ltd
 National Measurement Institute
 NCS International
 Neverfail Springwater Limited
 New England Print Pty Ltd
 NSF International
 Nutrinova (Australasia) Pty Ltd
 NZ Quality Waters Ltd
 Occaso Australia
 OI Plastics
 Orford Refrigeration Pty. Ltd.
 P & N Beverages Australia Pty Ltd
 Pakval Pty. Ltd.
 PepsiCo Australia Holdings Pty Ltd
 PET Technologies Ltd
 Pall Australia
 Pall Food & Beverage
 Pleass Beverages & Packaging
 Portola Packaging (ANZ) Ltd
 Puro Filter Company
 Quality Assurance International, LLC
 Quirks Australia
 Red Bull Australia Pty Ltd
 Stanwells Cordials & Confection
 Sugar Australia Pty Ltd Symrise Pty Ltd
 The Cape Grim Water Company Pty Ltd
 The Dannon Company Inc.
 The Spring Waterman
 The Le Mac Australia Group
 The NutraSweet Company Pty Ltd
 The Product Makers (Australia) Pty. Ltd
 T.W.T. Bottling Pty Ltd
 Tasmanian Natural Water Pty Ltd
 TCL Hofmann
 Unilever Australasia
 Visy Industries
 Waterfarms Australia Pty Ltd
 Waterwarriors International Pty Ltd
 Waterworks Australia Pty Ltd
 Wimmer Marketing
 Wet Fix Pty Ltd
 Willchris Pty Ltd
 Woodbine Park (Operations) Pty Ltd
 Yarra Valley Spring Water
