

Australian Food and Grocery Council SUBMISSION

MAY, 2012

TO:

AUSTRALIAN GOVERNMENT PRODUCTIVITY
COMMISSION

IN RESPONSE TO:

REGULATORY IMPACT ANALYSIS: BENCHMARKING
PRODUCTIVITY COMMISSION ISSUES PAPER

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of AFGC comprises more than 150 companies, subsidiaries and associates which constitutes in the order of 80 per cent of the gross dollar value of the processed food, beverage and grocery products sectors.

With an annual turnover of \$108 billion, Australia's food and grocery manufacturing industry makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity. The industry is similar in size to the mining sector.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector¹ is Australia's largest and most important manufacturing industry. Representing 26 per cent of total manufacturing turnover, the sector is the second largest industry behind the Australian mining sector and accounts for over one quarter of the total manufacturing industry in Australia.

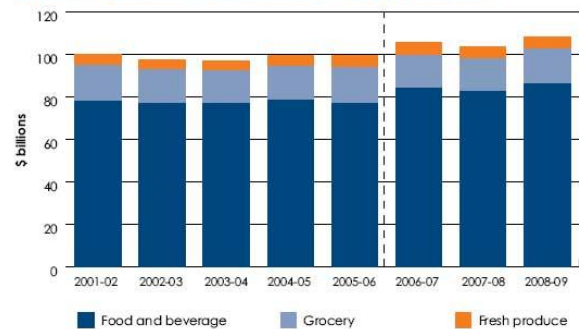
This growing and sustainable industry is made up of over 30,100 businesses and accounts for \$46 billion of the nation's international trade. The industry spends \$368 million a year on research and development.

The food and grocery manufacturing sector employs more than 312,000 Australians, representing about 3 per cent of all employed people in Australia, paying around \$13 billion a year in salaries and wages.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost half of the total persons employed being in rural and regional Australia². It is essential for the economic and social development of Australia, and particularly rural and regional Australia, that the magnitude, significance and contribution of this industry is recognised and factored into the Government's economic, industrial and trade policies.

Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.

Figure 4.1: Composition of the industry's turnover (\$2008-09)



Source: ABS, catalogue number 8221.0 and 8159.0

¹ Fast moving consumer goods includes all products bought almost daily by Australians through retail outlets including food, beverages, toiletries, cosmetics, household cleaning items etc.

² About Australia: www.dfat.gov.au

EXECUTIVE SUMMARY

The Australian Food and Grocery (AFGC) believe that an internationally competitive domestic food and grocery manufacturing industry supported by a robust and responsive policy and regulatory framework is critical to ensuring the food and grocery supply is secure, that it meets the nutrition and health needs of consumers, and it is sustainable for the longer term.

AFGC considers regulatory reform the most prominent and important policy lever the Government can pull to assist the food and grocery industries meet the challenges it is now facing.

Regulatory systems should be accessible; transparent and predictable. They should balance the risk posed by a product with the effort required to manage this risk whilst providing companies with the framework and direction to continue to provide better and more targeted products to meet the needs of consumers. Regulation without demonstrated value imposes unnecessary costs on industry and Government.

AFGC fully supports the Regulation Impact Assessment (RIA) process as specified by the Guidelines set out in the OBPR Best Practice Regulation Handbook (June 2010) and the COAG Principles of Best Practice Regulation (October 2007). If done well and due process is followed, an efficient regulatory system should result.

It is the AFGC's experience that, too often, this process is short cut or not carried out at all. This leads to poor outcomes for industry, government and the community.

Decision-making about regulatory proposals must be conducted in a manner that is transparent and that enables all those potentially impacted by existing or new regulation and other relevant stakeholders to provide input and advice into the process and seek a fair and equitable outcome.

AFGCs overarching requirement is that the processes outlined in both the OPBR and COAG Guides are followed, without exception.

In addition to this, AFGC requires the following:

- *Ex ante* assessment - for regulatory proposals that are perceived to have significant economic, social and environmental impact, *ex ante* assessment of costs, benefits and risks of the proposed regulatory response should be quantitative when possible.
- Timing – the RIA should be completed at the earliest stage of the new policy development process rather than as the last step to justify the merits of the policy decision.
- RIA oversight - the authority that oversees the RIA process should be statutorily independent.
- Resourcing - the OPBR must have the resources and skill to assess the adequacy of the RIA, not just whether due process has been followed.
- Transparency - the information on which government regulatory decisions are based should be publicly available and adequate time permitted for consultation.

AFGC supports the benchmarking of RIA processes across jurisdictions but question why this situation of variable process is permitted to continue to exist. AFGC also query why the purpose of the benchmarking exercise does not include evidence of where the RIA process has failed to result in improved regulation or where the process has not been followed at all. AFGC has provided examples of this in our submission.

Australian Food and Grocery Council

SUBMISSION

While this review will provide useful benchmark data, there must be a strategy subsequently developed to ensure consistency across all jurisdictions – this is the ONLY way to provide certainty for industry which is already struggling with increased pressures.

AFGC stands ready to provide further input into the Productivity Commission review.

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1. INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcome the opportunity to provide a written submission to the Australian Government Productivity Commission on the *Regulatory Impact Analysis: Benchmarking, Productivity Commission Issues Paper*.

AFGC is ready to work with the Productivity Commission to ensure that this reform process provides genuinely better regulation and supports our members to innovate and achieve sustainable growth.

This submission is in two parts:

1. Comments in relation to regulation in the food and grocery industry; and
2. Specific comments on the RIA process.

2. GENERAL COMMENT

2.1. AFGC position on regulation

AFGC believes that an internationally competitive domestic food and grocery manufacturing industry supported by a robust and responsive policy and regulatory framework is critical to ensuring Australia's food and grocery supply is secure, that it meets the nutrition and health needs of consumers, and it is sustainable for the longer term.

AFGC considers that the vision for the food and grocery manufacturing sectors should encompass the following two considerations:

1. that all [relevant] needs of Australian consumers are met through the foods and groceries available to them; and
2. that the industries providing those foods and groceries are as efficient and profitable as possible.

The first point goes to the important role of the food and grocery supply in supporting the health of consumers and their social and recreational needs; the second goes to the value of the food and grocery producing industries being as profitable as possible, employing Australians, and generating wealth for the nation with minimal environmental impact.

The framework in **Figure 1**, developed by the AFGC, recognises the importance of food and groceries to the wellbeing of Australians, and food and grocery producing industries to the wellbeing of Australia. More importantly it brings the two together. It is critical that any regulatory reforms reflect the fundamental maxim that the wellbeing of Australian consumers and the wellbeing of the food and grocery producing industries are intricately linked.

AFGC considers regulatory reform the most prominent and important policy lever the Government can pull to assist the food industry meet the challenges it is now facing.

Figure 1: A Vision for the Food and Grocery Manufacturing Sector

Vision	Platform	Key elements
A growing, profitable and sustainable industry...	Robust Australian food & grocery manufacturing industry	<ul style="list-style-type: none"> World class operating environment Lean and efficient supply chain A secure food source for Australia Consumer-driven innovation Preferred supplier to the world (growing export market)
... Economically, socially and environmentally providing a secure source of safe food and groceries to Australians	Clean, green, healthy & safe products	<ul style="list-style-type: none"> Greener industry and supply chain Reduced waste for a cleaner environment Improved health for the nation Guaranteed product safety and security
An industry that partners in educating and empowering consumers...	Informed & empowered consumers	<ul style="list-style-type: none"> Nutrition savvy consumers Clear and open food and product information Consistent, well-researched advice on healthy-eating and lifestyle
... Within a best practice policy and regulatory framework that demands the highest food and grocery standards	Minimal regulatory burden on industry	<ul style="list-style-type: none"> Agreed decision-making framework Comprehensive policy framework World renowned regulatory framework Full industry compliance

AFGC supports world class, efficient regulatory systems which encourage innovation and investment and ensure that Australia's manufacturing sector is sustainable.

Compliance with regulation is always costly; compliance with ineffective, inefficient or unnecessary regulation is wasteful in the extreme. It reduces business profitability directly, undermines investment attractiveness and diverts funds from innovative activities necessary for continued competitiveness and productivity growth.

Regulation without demonstrated value imposes unnecessary costs on industry and Government.

It is essential that regulation does not impose unnecessary costs and burdens on the food and grocery sector. There must be accountability and transparency to ensure that processes are followed.

Regulatory systems should be accessible; transparent and predictable. They should balance the risk posed by a product with the effort required to manage this risk whilst providing companies with the framework and direction to continue to provide better and more targeted products to meet the needs of consumers.

New regulation must:

- ensure a level playing field for Australian industry and not impose unnecessary barriers of entry or exit to markets;
- meet community and government expectations for safety and sustainability;
- minimise and prevent unnecessary regulatory burden;
- recognise the multiplier effect of added cost that regulation has on product availability and cost through the supply chain; and
- recognise the size of the market in Australia – we cannot be out of step with the rest of the world.

COAG recognises that regulation is not always the most appropriate and cost effective action to an identified need and indeed that generally regulation should be the last policy resort. The AFGC supports the continuum of regulatory measures which include the following:

- Regulation;
- Co-regulation; and
- Codes of Practice.

An evaluation of the proposed response should be undertaken to choose the best option and this should be done as part of the Regulatory Impact Analysis (RIA) process. It is therefore essential that policy makers and regulators seek to identify and consider all the alternatives available, including regulation.

2.2. AFGC position on RIA

AFGC fully supports the RIA process - if done well and due process is followed, an efficient regulatory system should result. It is AFGC's experience that, too often, this process is short cut or not carried out at all. This leads to poor outcomes for industry, government and the community.

In the following section (2.3) AFGC provides examples of this to assist in informing the Commission's benchmarking exercise.

2.3. AFGC experience with the RIA process

AFGC has expressed its views on a number of occasions in relation to the failure of those responsible for policy and regulation to fully engage with the RIA process. A summary of recent submissions is provided in Appendix 1.

AFGC has identified a number of recent examples where RIA processes have not been followed or a RIA has not been conducted at all. Details of these examples are provided in this section to inform the Commission's review.

The examples provided highlight the following issues in relation to the failure of agencies to ensure compliance with due process with respect to RIAs:

1. Failure to conduct a RIA at all;
2. Failure to conduct a RIA at the commencement of a review;

In this instance, once a proposed policy or regulatory response has been established, the RIA is used as an additional procedural requirement to justify the merits of the policy, rather than a process to carefully examine the proposed regulatory actions and the policy alternatives.

3. Failure to allow adequate consultation with stakeholders with RIA documents neither readily available nor easily accessible; and
4. Failure to conduct adequate cost benefit analysis considering (and believing) inputs and advice from stakeholders which may conflict with the views or objectives of the proposer.

2.3.1. Menu board labelling in Quick Service Restaurant (QSRs)

Issue: no RIA conducted

The gazettal in New South Wales of the *Food Amendment Bill 2010* required the display of nutritional information on menu boards and food displays. This pre-empted a national approach supported by industry and circumvented the formal standard development process as agreed to by Commonwealth, State and Territory jurisdictions which involves Food Standards Australia New Zealand (FSANZ). Slightly different approaches are being taken in various States and Territories. Even small differences in labelling requirements cost significant dollars, increase and cause consumer confusion and achieve no benefit for the broader community.

The NSW Bill was gazetted with unseemly haste at the end of 2010 with very limited stakeholder consultation and with no formal RIA being conducted with stakeholders. Indeed, many businesses only found out about the new regulatory requirement when called to an industry consultation after the Bill was gazetted.

Subsequently, the Food Regulation Standing Committee played 'catch-up' in developing a set of "National Principles" for menu board labelling to attempt to address the criticism that agreed national regulatory process had been discarded.

2.3.2. The Food Standards Amendment (*Truth in Labelling Palm Oil*) Bill 2011.

Issue: no RIA conducted

The *Food Standards Amendment (Truth in Labelling Palm Oil)* Bill is one of a number of Truth in Labelling Bills placed before Federal Parliament seeking to amend the FSANZ Act effectively suspending FSANZ's formal processes of standards development.

This runs counter to agreements made between the Commonwealth, States and Territories and New Zealand seeking consistent [bi]-national food regulations. It is also counter to the COAG's agreed regulatory policy.

In its submission to the House of Representatives Standing Committee (refer to Appendix 1) in 2011 AFGC made the following comment:

The Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 is an unnecessary, unworkable and unenforceable piece of legislation that attempts to override existing, well established processes for developing and implementing legislation.

It is unnecessary because a large proportion of the users of palm oil within the food and grocery sector have already made commitments to source sustainable palm oil by 2015 where sufficient quantities can be obtained and Australia only accounts for 0.3 per cent of the world palm oil consumption.

It is unnecessary because consumers already have information on labels regarding the amount of saturated fats present in the product. Labelling palm oil will not have any additional health benefit.

It is unworkable and unenforceable on the basis that it is virtually impossible and very costly for enforcement agencies to detect the origin of palm oil derivatives which do not differ in chemical composition from derivatives of other vegetable oils.

Specifically, with respect to the current [Productivity Commission] consultation:

The Bill attempts to bypass existing processes for legislation implementation, overrides State and Territory laws and has had limited stakeholder or public consultation or review of impacts.

A RIA was not conducted prior to introducing this Bill into Parliament – had this process occurred, it should have identified the issues surrounding the proposal as outlined above.

2.3.3. Health and Nutrition Related Claims (P293)

Issue: Failure to conduct RIA prior to the current round of consultation

A prime example of how regulation is failing industry and Australian consumers is in the area of nutrition and health claims. Industry has long been prohibited from making any claims for health protection and promotion or cure claims (except for the link between maternal dietary folate and neural tube defects in newborn infants using folic acid).

However industry has been able to inform consumers about the levels of nutrients in foods and their physiological functions. These have been made in guidelines within the Food Standards Code, and the Competition and Consumer Act 2010 (formerly the Trade Practices Act) providing consumer protection against false or misleading statements.

FSANZ is now proposing to amend the Food Standards Code to prohibit companies making physiological function claims, including some which are currently on the market, unless they are pre-approved and the foods meet specific nutrient profile qualifying criteria. This will impose **substantial, additional costs on industry and act as a disincentive to innovation of products** towards helping consumers enjoy healthy diets.

FSANZ has never demonstrated that current claims are misleading or harmful to consumer health. But they are proposing regulatory changes which will force companies to alter their labels. Clearly, this is **inconsistent** with the concepts of minimal effective regulation and minimising costs to industry.

AFGC has proposed a co-regulatory approach to nutrition and health claims with Industry Codes guiding food companies on the use of softer, generic health claims, coupled with full-regulation of strong high-level claims promoting food consumption to reduce disease risk. This is consistent with the concepts of proportionate regulatory response and streamlined regulation.

The most recent round of consultation on P293 (Nutrition, Health and Related Claims) occurred in February 2012 and the FSANZ consultation paper made the following reference to the RIS³:

“FANZ prepared a Regulation Impact Statement (RIS) including a cost-benefit analysis as part of the P293 Final Assessment Report (2008).

During the development of a review response, FSANZ has consulted with the Office of Best Practice Regulation (OBPR) which has advised that given the lapse in time, a revised RIS will be required in order to address changes arising from the review of draft Standard 1.2.7, and any further amendments relating to fat-free claims.

³ <http://www.foodstandards.gov.au/foodstandards/proposals/proposalp293nutritionhealthandrelatedclaims/>

FSANZ will be preparing the revised RIS once submissions to this call for comment have been received and considered. FSANZ will be undertaking targeted consultation with industry and the jurisdictions on this revised RIS.”

This is a clear failure to follow due process, providing a RIS after the consultation process has occurred.

In the AFGC submission to FSANZ (refer to Appendix 1), AFGC advised it considered the proposed standard to be extremely inadequate and unworkable noting that it:

- Fails to adopt the requirements of the Ministerial Council Policy Guideline on Nutrition, Health And Related Claims, which FSANZ must have regard to;
- Fails to provide a simple and straightforward framework for industry to make factual and truthful claims about what products contain to assist consumers make informed food choices;
- Fails to support an innovative and productive food industry sector in Australia, which develops and produces new and healthier food products for consumers;
- Fails to meet requirements for minimum effective regulation and will in fact impose significant additional burden by imposing highly restrictive criteria to General levels health claims;
- **Fails to consider the millions of dollars in costs that will be imposed on industry to implement the standard including significant label changes;** and
- Fails to accept current nutritional wisdom that it is inappropriate to impose dietary guideline criteria, based on population statistics and average daily diets, to individual foods and will prohibit claims on foods which are considered part of a healthy diet.

AFGC is concerned that if imposed, the draft standard will not provide consumers with accurate information; will add significant burden and costs to industry; and will significantly stifle innovation in food products thereby threatening Australian food industry competitiveness and long term viability, with resultant job losses and the shift of manufacturing offshore.

It is of interest to note that the New Zealand government considers the potential cost impost on industry so great that if FSANZ gazettes the standard in its current form, it will seek an exemption, as is their right under the trans-Tasman arrangements. It is incongruous that the most important labelling standard to be developed in the last 10 years is so flawed that a key jurisdiction will seek an exemption if it is adopted.

2.3.4. AQIS introduction of a limit on iodine in seaweed

Issue: no RIA conducted

In October 2010 AQIS imposed a limit on iodine in seaweed - there is currently no limit set in the Food Standards Code. Seaweed is naturally high in iodine and may have significant variation in levels depending on location and species. This requirement is purely an arbitrary level imposed on imported foods. This action was taken without AQIS conducting a RIA.

Kombu, the dried kelp seaweed has disappeared from Asian grocers and other suppliers to the Asian restaurant trade. A limit of 1000 mg/kg dry weight for iodine in seaweed - brown algae / seaweed

vegetables was imposed in Imported Food Notice 10/10 in October 2010, which has now been superseded by Imported Food Notice 17/11 (October 2010).

In the 6 months from September 2011 to March 2012, 25 shipments of seaweed have failed the iodine limit. Data on the number of shipments that have passed the iodine limit is unavailable. However, based on the fact that kombu and other seaweed products have become unavailable in the Australian market would indicate that there have been very few, if any, shipments that have passed the iodine test and allowed into the country.

The response of imposing an iodine limit to seaweed based on the problem caused by the non-traditional use of kombu in soy milk appears to have had the possibly unintentional consequence of becoming a ban on the import of many seaweed products. This endangers trade in Australian made products using seaweed.

If a RIA had been carried out as part of this process, these potential issues would have been identified and further work should have been done by AQIS with key stakeholders to ensure that Kombu continues to be available in Australia.

2.3.5. Regulatory Impact Statement - Proposed Prevention of Cruelty to Animals Regulations 2008

Issue: Failure to adequately consider all alternatives and full cost implications

In the AFGC submission to the Bureau of Animal Welfare Victorian Department of Primary Industries on the Draft Prevention of Cruelty to Animals (Prohibition of Glue Trapping) Regulations 2005 (refer to Appendix 1), AFGC advised the following:

The RIS statement significantly underestimates the costs to industry and the community in both the direct costs of providing alternative, more expensive pest control, and the indirect costs of a food poisoning outbreak as a result of being unable to control rodents with the same degree of efficiency as is currently available. Several large food recalls have occurred in Australia in recent years, each one is estimated to have cost the manufacturer many millions of dollars in lost sales and direct costs for collection and destruction as well as compensation costs for illness.

The AFGC considers the options provided in the RIS are too restrictive and do not take account of the impact and feasibility of using glue boards on farms. It would be impossible to restrict the use of glue boards to licensed pest control operators, given the logistics of getting pest control operators out to farms on a regular basis.

2.3.6. Alcohol Warning Labelling

Issue: Proposal assessed as non compliant to COAG Best Practice Regulation requirements – no RIS prepared.

On 9 December 2011, the Legislative and Governance Forum on Food Regulation (the Forum) announced its response to the recommendations of the Review of Food Labelling Law and Policy. The response included a decision to support a warning message about the risks of consuming alcohol while pregnant. While the industry was given an opportunity to introduce appropriate labelling on a voluntary basis, after a period of two years the appropriate labelling will be regulated.

The Council of Australian Governments (COAG) best practice regulation requirements apply to decisions by ministerial councils or other bodies where there is a reasonable expectation of widespread compliance. Under the COAG requirements a Regulation Impact Statement (RIS) is prepared for the consultation stage and for the decision stage.

As RISs were not prepared for consultation or the decision, the OBPR assessed the proposal relating to alcohol warning labels as being non-compliant with the COAG best practice regulation requirements.

2.3.7. DRAFT Agriculture and Veterinary Chemicals Legislation Amendment Bill 2011 released by the Department of Agriculture, Fisheries and Forestry (DAFF).

Issue: RIA did not include assessment of costs and benefits

In our submission to DAFF (refer to Appendix 1), AFGC raised concerns with respect to the consultation process, as follows:

- Key documents were inconsistent and inaccurate. The contents of the RIS did not reflect the provisions of the Exposure Draft. This made analysis by stakeholders excessively difficult; and
- There had been no quantitative assessment of costs or benefits to governments, the community, the affected industry(s) or any other stakeholder group.

AFGC also made the following comments about the RIS:

The reform proposals should aim to reduce costs and facilitate access, not increase regulation to further manage these risks.

An efficient and cost effective registration process will encourage international chemical manufacturers to introduce new product to Australia, thus ensuring the industry is able to avail itself of the best and most up-to-date agvet chemicals; chemicals which otherwise may not have been made available because of the comparatively limited size of the Australian market.

Increased costs associated with the proposals will be passed on to chemical users and we seek assurance that the reforms will result in net benefits. The Regulation Impact Statement (RIS) released along with the proposed legislative amendments fails to address this. There is little substantive analysis of the costs and benefits of reforms – and almost no quantification of these. Instead, it relies upon general assertions of benefits and cursory recognition of costs.

The most solid analysis of potential costs and their impacts comes from the APVMA's release of the Cost Recovery discussion paper (2012-2015). This detail should be incorporated into the RIS to aid analysis of the impact of the proposed amendments.

If the proposed legislative amendments are accepted, a comprehensive evaluation of their impact should be made once they are implemented. This should look at the impact of reforms on agvet chemical availability and cost to identify whether unintended consequences (such as loss of generic or niche products) are occurring, and if reforms require modification.

2.3.8. Proposal on improving access to information to support introducers of NICNAS assessed chemicals to notify the director of changed circumstances

Issue: consultation conducted ahead of the RIA

In the submission to NICNAS, AFGC raised concerns with respect to the consultation process, as follows:

AFGC considers that the consultation on the “*Proposal on Improving Access to Information to Support Introducers of NICNAS Assessed Chemicals to Notify the Director of Changed Circumstances*” released by National Industrial Chemicals Notification and Assessment Scheme (NICNAS) should be deferred until such time as:

- the outcomes and recommendations from the Better Regulation Ministerial Partnership Review of NICNAS is finalised and available to the industry; and
- A Regulation Impact Statement (RIS) is completed.

A Regulatory Impact Statement with substantive analysis of the costs and benefits of reforms is essential to ensure that any increase in costs to NICNAS and/or industry will be balanced by tangible benefits to all stakeholders.

NICNAS does not appear to have conducted any evaluation to determine how much this project is expected to cost, or estimated the length of time required to complete each step of the project. This is despite the fact that NINCAS stated in the consultation document that:

“The disadvantages of the proposed approach:

- *The longer term measure is resource intensive for NICNAS to initially amend the AICS entries for all chemicals previously assessed as new chemicals. This is not a trivial exercise and will need to be allowed for in forward planning; and*
- *Under the longer term measure, it may also be resource intensive for NICNAS to deal with written enquiries relating to secondary notification requirements that are not specific on the AICS record...”*

In the absence of a RIS, AFGC was concerned that the impact of any costs associated with the proposed reforms has not been adequately assessed. Such costs have the potential to place additional pressures on an already cost stressed supply chain.

The AFGC requested that further action on this consultation is deferred until a RIS is conducted and available for review by all stakeholders so that the impact of the proposed changes can be fully understood.

2.3.9. Packaging Impacts Consultation Regulation Impact Statement (PICRIS)

Issue: PICRIS does not establish a case for action

In a recent submission to the Standing Council on Environment and Water Secretariat (refer to Appendix 1) the AFGC expressed the view that the PICRIS does not establish the case for action and ministers should examine more closely whether there is a problem and if further regulation is required and would be of benefit.

The AFGC is of the view that the PICRIS does not make a clear and robust case for further government regulation in relation to packaging waste management. Similarly, AFGC considers the PICRIS does not align with COAG requirements in assessing the cost implications on businesses in the supply chain. Specifically in relation to the impact of increased regulatory measures and the negative effect of increased costs on the competitiveness of the Australian food and grocery (and other) manufacturing sectors at a time when they are already facing substantial challenges just to remain viable.

2.3.10. Environmental Regulation

Issue: RIA to identify duplication of regulation across agencies and jurisdictions

AFGC has previously recommended amendments to environmental reporting to ensure minimum duplication and maximum coordination and consistency across Federal and State regulatory regimes.⁴

Australian food and grocery manufacturers must comply with an ever-increasing range of environmental legislation relating to water, waste and energy use. Across different States, the various regulatory environments cost time, money and resources.

Specifically there are a number of national and State programs which require reporting of identical data to different Government departments which is very resource-intensive for companies.

For example: A manufacturing site in Victoria is required to report almost identical data to:

- EREP (State Government) - Energy, water and waste;
- Watermap (State Government) – water;
- EEO (Federal Government) – energy and initiatives/progress to reduce;
- NGERs (Federal Government) – energy; and
- NPI (Federal Government) - energy and various emissions depending on triggers.

Manufacturers recognise the need to report, monitor and improve environmental impacts; this plays a key role in determining where to direct resources and action. However the costs of the ever-increasing and inconsistent regulatory requirements are extremely onerous and should be a priority to consider.

⁴ AFGC Submission Federal Coalition Deregulation Taskforce (Chair Senator Arthur Sinodinos) in response to: Reducing Red Tape and Unnecessary Regulation (Appendix 4)

Amending the regulatory approach to environmental reporting to ensure there is minimum duplication and maximum coordination and consistency across Federal and State regulatory regimes will significantly reduce the costly regulatory burden, facilitate a nationally consistent approach and ensure the regulatory impost on industry is proportionate to the risk being managed.

2.4. What does AFGC require?

AFGC supports the RIA process, as specified by the Guidelines set out in the OBPR Best Practice Regulation Handbook (June 2010) and the COAG Principles of Best Practice Regulation (October 2007).

Decision-making about regulatory proposals must be conducted in a manner that is transparent and that enables all those potentially impacted by existing or new regulation and other relevant stakeholders to provide input and advice into the process and seek a fair and equitable outcome.

Our overarching requirement is that the processes outlined in both the OPBR and COAG Guides are followed, without exception.

A number of examples have been provided in section 2.3 of our submission to demonstrate that the RIA process is not being adhered to and this is of significant concern to the AFGC and should be to governments in their quest to reduce regulatory burden and red tape.

2.4.1. The RIA process should be followed without exception

AFGC notes the following:

‘The RIS requirements apply to all Australian Government departments, agencies, statutory authorities and boards (referred to collectively as ‘agencies’) that review or make regulations that have an impact on business or the not-for-profit sector, including agencies or boards with administrative or statutory independence. The agency responsible for bringing the proposal to the decision maker is also responsible for ensuring the RIS requirements are met. Agencies are also responsible for preparing and publishing an Annual Regulatory Plan in July each year.’⁵

AFGC therefore requests that departments, agencies, statutory authorities and boards responsible for regulatory proposals **must be held to account**. This must also apply to COAG, Ministerial Councils and intergovernmental standard-setting bodies.

All regulation that may affect business should be subject to a regulation impact assessment (RIA) process that analyses alternative options. A range of options for achieving the objective should be considered (as well as no action or the status quo option); and an analysis of the likely economic, social and environmental consequences conducted.

RIA should be mandatory for new or amended legislation, irrespective of the agency initiating the changes. There should be no exemptions, for example, for amending or new legislation through a political platform.

⁵ OPBR Best Practice Regulation Handbook, June 2010

2.4.2. Ex ante assessment

For regulatory proposals that are perceived to have significant economic, social and environmental impact, *ex ante* assessment of costs, benefits and risks of the proposed regulatory response should be quantitative when possible.

It should be compulsory for the RIA process to include a proper cost–benefit analysis.

The assessment of regulatory cost should include both direct cost (e.g. administrative and compliance costs) and opportunity cost borne by the government, industry and consumers.

2.4.3. Timing of a RIS

RIA should be completed at the earliest stage of the new policy development process rather than as the last step to justify the merits of the policy decision. Moreover, the no action/regulation option should always be the baseline scenario.

2.4.4. RIS oversight

The authority that oversees the RIA process should be statutorily independent to ensure that the oversight body has strong gate keeping powers to enforce RIA requirements. Thus, the Office of Best Practice Regulation should be more appropriately part of the Productivity Commission, rather than under the Department of Finance and Deregulation.

2.4.5. Resourcing

The OPBR must have the resources and skills to assess the adequacy of the RIA, not just whether due process has been followed.

Governments must ensure the provision of adequate resources to departments to ensure that robust RIA's can be conducted.

2.4.6. Transparency

The information on which government regulatory decisions are based should be publicly available and adequate time permitted for consultation with stakeholders built into the process taking into account the time and resources required by stakeholders to assess the impacts of changes proposed.

Publication of the final RIS must be required before the regulation is passed.

3. COMMENTS ON THE ISSUES PAPER

3.1. Terms of Reference

3.1.1. Purpose

*“The **purpose** of the benchmarking study is not to develop a harmonised approach to RIA processes, but to compare processes and identify leading practices, including the practical effectiveness, integration and policy influence of RIA processes with regard to:*

- the mechanisms in place to ensure accountability and compliance with RIA processes;*
- specific evidence of where the RIA process has resulted in improved regulation;*
- how and when in the decision-making cycle Ministers, or other decision makers, engage with RISs; and*
- whether there are leading practice examples in RIA that might usefully inform reform consideration by individual jurisdictions.”*

AFGC supports the benchmarking of RIA processes across jurisdictions but question why this situation of variable process is permitted to continue to exist. With respect to the food and grocery industry represented by AFGC, companies operate in national and international markets – the Australian environment should be seamless and there should not be “artificial borders” created by regulatory processes or indeed the processes that support development of regulation.

AFGC queries why the purpose of the benchmarking exercise does not include evidence of where the RIA process has failed to result in improved regulation or where the process has not been followed at all. AFGC has provided examples of this in this submission.

While this review will provide useful benchmark data, there must be a strategy subsequently developed to ensure consistency across all jurisdictions – this is the only way to provide certainty for industry which is already struggling with increased pressures.

4. CONCLUSION

AFGC supports a regulatory system that provides companies with the framework and direction to continue to provide better and more targeted products to meet the needs of consumers. AFGC also supports world class, efficient regulatory systems which encourage innovation and investment and which ensure that Australia’s manufacturing sector is sustainable.

AFGC stands ready to provide further input into the Productivity Commission review and would welcome the opportunity to meet with the Commission to discuss this submission further.

5. ATTACHMENT 1 - AFGC SUBMISSIONS

Following is a list of recent submissions in which AFGC has expressed views in relation to the failure of those responsible for policy and regulation to fully engage with the RIA process.

All of these submissions are available on the AFGC website at the following link:

<http://www.afgc.org.au/tools-guides-.html#submissions>

1 House of Representatives Standing Committee

Inquiry into the Food Standards Amendment (Truth in Labelling - Palm Oil) Bill 2011, August 2011

2 Food Standards Australia New Zealand (FSANZ)

Proposal P293 - Nutrition, Health & Related Claims, March 2012

3 Bureau of Animal Welfare Victorian Department of Primary Industries

Draft Prevention of Cruelty to Animals (Prohibition of Glue Trapping) Regulations 2005, August 2005
(Note – available on request)

4 Department of Agriculture, Fisheries and Forestry (DAFF)

DRAFT Agriculture and Veterinary Chemicals Legislation Amendment Bill 2011, February 2012

5 Department Of Health And Aging, NICNAS

Proposal on Improving Access to Information to Support Introducers of NICNAS Assessed Chemicals to Notify the Director of Changed Circumstances, February 2012

6 Standing Council on Environment and Water Secretariat

Packaging Impacts Consultation Regulation Impact Statement, March 2012

7 Federal Coalition Deregulation Taskforce (Chair Senator Arthur Sinodinos)

Reducing Red Tape and Unnecessary Regulation, February 2012

AFGC Members List (as at 30 March 2012)

Arnott's Biscuits Limited	Laucke Flour Mills	Brisbane Marketing
Australian Blending Company P/L	Lion Dairy and Drinks	CHEP Asia-Pacific
Barilla Australia Pty Ltd	Madura Tea Estates	CSIRO Food and Nutritional Sciences
Beak & Johnston Pty Ltd	Manildra Harwood Sugars	CoreProcess (Australia) Pty Ltd
Beechworth Honey Pty Ltd	Mars Australia	*CropLife
Beerenberg Pty Ltd	McCain Foods (Aust) Pty Ltd	CROSSMARK Asia Pacific
Bickfords Australia	McCormick Foods Aust. Pty Ltd	Dairy Australia
Birch and Waite Foods Pty Ltd	McDonald's Australia	FACTA (Food Allergen Control Training Analysis)
BOC Gases Australia Limited	Merisant Manufacturing Aust. Pty Ltd	Food Liaison Pty Ltd
Bronte Industries Pty Ltd	Murray Goulburn Co-operative	FoodLegal
Bulla Dairy Foods	Myosyn Industries	*Foodservice Suppliers Ass. Aust.
Bundaberg Brewed Drinks Pty Ltd	Nerada Tea Pty Ltd	*Food and Beverage Importers Association
Bundaberg Sugar Limited	Nestlé Australia Limited	*Food Industry Association QLD
Byford Flour Mills T/a Millers Foods	Nutricia Australia Pty Ltd	*Food Q
Campbell's Soup Australia	Ocean Spray International Inc	Foodbank Australia Limited
Cantarella Bros Pty Ltd	Only Organic 2003 Pty Ltd	*Grains & Legumes Nutrition Council
Carman's Fine Foods Pty Ltd	Parmalat Australia Limited	Grain Growers
Cerebos (Australia) Limited	Patties Foods Pty Ltd	Grant Thornton
Cheetham Salt Ltd	Pfizer Consumer Healthcare	GS1
Christie Tea Pty Ltd	Procter & Gamble Australia Pty Ltd	Harris Smith
Church & Dwight (Australia) Pty Ltd	Queen Fine Foods Pty Ltd	IBM Business Cons.
Clorox Australia Pty Ltd	QSR Holdings	Infosys
Coca-Cola Amatil (Aust) Limited	Reckitt Benckiser (Aust) Pty Ltd	innovations & solutions
Coca-Cola South Pacific Pty Ltd	Red Bull Australia	KN3W Ideas Pty Ltd
Colgate-Palmolive Pty Ltd	Rosella Foods Pty Ltd	KPMG
Coopers Brewery Limited	Safcol Canning Pty Ltd	Leadership Solutions
Danisco Australia Pty Ltd	Sanitarium Health and Wellbeing	Legal Finesse
Devro Pty Ltd	Sara Lee Australia	Linfox Australia Pty Ltd
DSM Food Specialties Australia Pty Ltd	SCA Hygiene Australasia	Logan Office of Economic Dev.
Earlee Products	Schweppes Australia	Meat and Livestock Australia Limited
Eagle Boys Pizza	Sensient Technologies	Monsanto Australia Limited
FPM Cereal Milling Systems Pty Ltd	Simplot Australia Pty Ltd	New Zealand Trade and Enterprise
Ferrero Australia	Spicemasters of Australia Pty Ltd	Pacific Strategy Partners
Fibrisol Services Australia Pty Ltd	Steric Pty Ltd	*PLMA Australia / New Zealand
Fonterra Brands (Australia) Pty Ltd	Stuart Alexander & Co Pty Ltd	QLD DEEDI
Food Spectrum Group	Subway	Red Rock Consulting
Frucor Beverages (Australia)	Sugar Australia Pty Ltd	RQA Asia Pacific
General Mills Australia Pty Ltd	SunRice	Spectrum Automation
George Weston Foods Limited	Tasmanian Flour Mills Pty Ltd	StayinFront Group Australia
GlaxoSmithKline Consumer Healthcare	Tate & Lyle ANZ	Strikeforce Alliance
Go Natural	The Smith's Snackfood Co.	Swire Cold Storage
Goodman Fielder Limited	The Wrigley Company	Swisslog Australia Pty Ltd
Gourmet Food Holdings	Tixana Pty Ltd	Tetra Pak Marketing Pty Ltd
H J Heinz Company Australia Limited	Unilever Australasia	The Food Group Australia
Harvest FreshCuts Pty Ltd	Vital Health Foods (Australia) Pty Ltd	The Nielsen Company
Healthy Snacks	Ward McKenzie Pty Ltd	Touchstone Cons. Australia Pty Ltd
Hoyt Food Manufacturing Industries P/L	Yakult Australia Pty Ltd	Valesco Consulting
Hungry Jack's Australia	Yum Restaurants International	Visy Pak
IGEA Group	Associate & *Affiliate Members	Wiley & Co Pty Ltd
Jalna Dairy Foods	Australian Pork Limited	PSF Members
JBS Australia Pty Limited	ACI Operations Pty Ltd	Amcors Packaging Australia
Johnson & Johnson Pacific Pty Ltd	Allens Arthur Robinson	Bundaberg Brewed Drinks Pty Ltd
Kellogg (Australia) Pty Ltd	Amcors Fibre Packaging	Schweppes Australia Pty Ltd
Kerry Ingredients Australia Pty Ltd	*ASMI	Coca-Cola Amatil (Aust) Limited
Kimberly-Clark Australia Pty Ltd	AT Kearney	Lion Dairy and Drinks
Kraft Foods Asia Pacific	Baker & McKenzie	Owens Illinois
	*Baking Association Australia	Visy Pak
	Benchmarking for Performance	

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