Australian Food and Grocery Council

SUBMISSION

26 NOVEMBER 2013

TO:
NATIONAL COMISSION OF AUDIT

IN RESPONSE TO:
CALL FOR SUBMISSIONS

Australian Food and Grocery Council

PREFACE

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 180 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.

Source: Basec

With an annual turnover in the 2011-12 financial year of $111 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.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector[1] is Australia's largest manufacturing industry, accounting for over one quarter of the total manufacturing industry in Australia.

The diverse and sustainable industry is made up of over 25,600 businesses and accounts for over $50 billion of the nation's international trade. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. This sector spends $535 million a year on research and development.

The food and grocery manufacturing sector employs almost 300,000 Australians, representing almost one third of all manufacturing jobs in Australia, and paying around $12 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 Australia[2]. 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.

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

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1. INTRODUCTION

The food and grocery sector is vital to Australia's economic growth, regional trade, employment and social fabric: it is Australia's largest manufacturing sector, a key employer especially in rural and regional areas, exporting valued added goods and investing in research and innovation.

It is of serious concern, then, that a recent Deloitte Access Economics (DAE) report [3] commissioned by the Australian Food and Grocery Council (AFGC) describes the sector as having "*one of the poorest examples of industry regulation in Australia*": duplicative, cumbersome, burdensome, driving unclear policy agendas, in numerous cases without any scientific basis to match regulation with outcomes.

The Terms of Reference for the National Commission of Audit (NCA) are directed to ensuring that the Commonwealth Government spends its money wisely, targeting functions that it can deliver better than industry and State/Territory governments, and ensuring that in these key areas, programs are delivered efficiently and effectively. AFGC, representing over 180 manufacturers, brand owners and related service providers, supports the work of the Commission as being timely and necessary.

The Australian food and grocery manufacturing sector is a highly competitive, trade-exposed sector facing significant challenges from a high Australian dollar, retail price deflation, comparatively high labour and energy costs and over-regulation that discourages investment and innovation. The reform of food and grocery regulation can deliver significant benefits and savings to both the Commonwealth Government and to the food and grocery industry, as well as drive growth. The good news is the industry's resilience and ability to capitalise on reform: economic modelling in the DAE Report demonstrates that the removal of $100 million in regulatory costs will generate an increase of around $240 million in GDP and create around 220 new jobs. A separate DAE Report identifies agribusiness as one of five potential boom sectors for Australia's post-mining economy.[4]

The food and grocery industry supports appropriate, best-practice regulation which enhances the competitiveness and growth of the sector, and provides a clear point of differentiation in export markets. Current regulation, in contrast, reflects a risk averse and controlling culture, based on a multitude of ideological policy agendas that has transformed the industry from a world-leading innovator into a late adopter of imported technology.

The following pages detail a dozen reform proposals based on the 2013 DAE Report, focussing on those issues identified by the food and grocery sector as significant, realistically achievable and, crucially, which do not impact on the continued safety of Australia's food and grocery supply.

Not all of this reform agenda lies squarely within the ambit of the NCA. That said, the costs to government of poor regulation do not diverge from the costs to industry: poor regulation imposes significant costs and resource demands on both. This submission identifies reform priorities for the food and grocery industry, and places them within the scope of the NCA's Terms of Reference for consideration.

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3 *Reforming regulation of the Australian food and Grocery Sector*, Deloitte Access Economics, 28 October 2013

4 *Building the Lucky Country#3: Positioning for prosperity? Catching the next wave*, Deloitte Access Economics, October 2013

2. REFORM SPECIFICS

2.1. BEST PRACTICE REGULATION

AGENCY: Office of Best Practice Regulation (OPBR)

ISSUE: ***Scope of Government***

OBPR is intended to administer the Government's regulatory impact analysis, including assisting agencies in preparing regulation impact statements (RISs) through training and guidance; monitoring and reporting on the Government's regulatory impact analysis requirements; and administering the Council of Australian Governments (COAG) guidelines for regulation-making by national bodies.

PROBLEM

The current system needs to be strengthened and a culture of best practice entrenched within regulators and agencies to avoid lip service approaches to best practice and RISs. In particular –

- Regulators are sometimes unaware of, or too ready to dismiss or trivialise, the costs their actions have on industry - a classic example being agency belief that labelling changes have no cost impacts because "industry is changing labels all the time";
- Legislative objectives for many agencies rightly stress public health and safety objectives, but this can encourage agencies to focus *only* on such effects and engender regulatory conservatism based on false paradigms of absolute safety - the assessment of regulating measures does not include impacts such as cost of living, employment, trade and investment;
- Australian regulators tend to consider themselves to be world-leading, but Australian specific or idiosyncratic regulation in fact serves as an impediment to trade – requirements for specific Australian-only labelling around sports foods, or even nutrition information, serve as examples;
- Little effort is given to reviewing the efficacy of regulatory outcomes, or even implementing regulations that are even able to be reviewed: an example is the introduction of mandatory folic acid fortification of wheat flour for making bread to reduce the incidence of foetal neural tube defects (NTDs), when there is no Australia-wide data on NTD incidence to validate whether or not the measure, introduced at significant cost to industry, has had any effect.

EXAMPLES

Two current examples where there is a real risk of poor regulatory outcomes are:

(1) **Health Star Rating – Front of Pack Nutrition Labelling.** In July 2013 the Office of Best Practice Regulation declared that a Consultation RIS and Decision RIS should have been conducted on a proposed Health Star Rating nutrition labelling scheme approved by the Legislative and Governance Forum on Food Regulation (FOFR) in June 2013. Despite this ruling the Commonwealth Department of Health has shown no willingness to conduct a RIS. Industry will incur significant costs in implementing the proposed scheme and has consistently argued that a thorough cost-benefit analysis should be undertaken; that additional consumer research is essential to test whether the scheme will change consumer behaviour; and that implementation should be flexible enough to accommodate the existing Daily Intake Guide, a voluntary nutrition labelling scheme widely adopted by food companies at no cost to the taxpayer. There are also significant costs to the Commonwealth in the introduction of the new scheme including a cumbersome and excessively bureaucratic oversight system in contrast to an Industry Code administered by the AFGC as occurs currently.

(2) **Container Deposit Legislation / Packaging Regulation.** In March 2013 the Federal Court ruled that the Northern Territory's "Cash for Containers" scheme was in breach of the Mutual Recognition Act. Despite this, the (former) Prime Minister signed off a permanent exemption from the MRA shortly before the September election, enabling the Northern Territory's expensive and inefficient scheme to continue. Other states are also examining container deposit schemes despite a Consultation RIS for the COAG Standing Committee on Environment and Water (SCEW) finding that a national Container Deposit Scheme would cost between $1.4 and $1.76 billion and that co-regulatory industry options would deliver similar outcomes for packaging recycling and litter reduction for 1/28th of the cost. A Decision RIS is now underway and there remains a risk that one or more states will seek to introduce local container deposit schemes despite clear evidence that they add unnecessary costs and inconvenience to consumers; add cost and regulatory burden on industry; and undermine successful co-regulatory approaches.

On the related topic of packaging, there is a co-regulatory arrangement for packaging waste, through the Australian Packaging Covenant (APC) under which government and industry co-contribute funding for recycling and litter reduction projects and assisting brand owners to use more sustainable packaging. Over the past 5 years, Environment Ministers have been reviewing options for packaging regulation, many of which significantly increase the cost and compliance burden on industry. As an alternative, industry has worked through the National Packaging Industry Association, to develop a ten year commitment to provide real solutions to increase recycling and reduce litter, with increased industry funding and targeted initiatives to improve outcomes. This option builds on the existing APC and its success as a collaborative model. It is an example of what can be achieved without heavy handed and costly regulation

SOLUTION

The biggest need is to find a mechanism that ensures best practice regulation is taken seriously, e.g. –

- Embed OBPR staff in regulatory agencies with power of veto over regulatory measures, or provide some sanction that OBPR can apply for non-compliance with regulatory standards;
- Empower OBPR to take the initiative in consulting industry to ensure RIS accuracy;
- Require Australian-specific requirements to be matched with recognition of equivalent requirements of trading partners;
- Conduct an independent *ex post* cost-benefit analysis of each function of each special-purpose regulator assessed against alternative broad-based regulation;
- Require agencies to assess and report on broader social costs associated with risk management decisions; and
- Utilise the Commonwealth's effective power of veto under the Mutual Recognition Act (1992) to put a brake on state-based regulation that adds cost to business or consumers.

SAVINGS

The savings derived from this proposal arise from reduced agency costs that are derived from better and more efficient delivery of regulation and consequent efficient delivery of regulatory outcomes and services. Importantly, it also allows the Government to do less managing and more governing.

An Australia that is reopen for business needs a regulatory environment that drives growth and innovation both domestically and in export, and AFGC's key issue in this submission is that best practice in regulation is primarily what the food and grocery sector needs: it does not seek protection, but rather the ability to innovate, invest and respond flexibly to issues: an ability that has been curtailed by the current regulatory environment.

2.2. DUPLICATION OF PUBLIC HEALTH ADVOCACY

AGENCY: Australian National Preventive Health Agency (ANPHA)

ISSUE: ***Consolidation of agencies***

ANPHA was established as a Commonwealth Government initiative as part of the Council of Australian Governments' response to the report of the National Preventive Health taskforce. It has a focus on tobacco control, obesity and its prevention, reduction in alcohol harm and GP-based preventive health strategies.

PROBLEM

The policy goals expressed in ANPHA's programs are individually laudable, and the food industry is well aware of the issues arising from non-communicable diseases such as type II diabetes and coronary heart diseases that are associated with obesity.

The problem is that public advocacy on all ANPHA issues already existed in individual State and Territory health agencies as well as in the Commonwealth Department of Health, and national frameworks exist for these agencies to coordinate their activities. The creation of ANPHA did not result in the removal of these existing programs, it just added another set of people working on the same issues and with the same agenda.

Aside from duplication of existing functions, AFGC has concerns with ANPHA governance, especially in regard to judgements over research funding, auditing and oversight. By way of example it was exposed earlier this year that a grant of almost half a million dollars in ANPHA funding had been allocated to research on Fat Taxes, despite the Henry Tax Review rejecting the idea, the failure of similar taxes overseas, and both government and opposition ruling it out. The longer ANPHA remains in existence the greater the risk that limited health dollars will be allocated to these activist 'causes' rather than solid health outcomes.

SOLUTION

No case has been demonstrated that an agency like ANPHA is necessary or even beneficial. The recommendation for its creation seemed to be a concern that existing agency resources were not achieving their policy goals, but the response to create a new agency, with all the perils of competing agencies seeking to justify their existence, would seem to be an expensive exercise in duplication rather than achieving significant reform.

There is an obvious solution that ANPHA as an entity need not exist: its functions can be and are being delivered by Commonwealth and State/Territory health departments. The Commonwealth should be vigilant in ensuring the functions are staff are not simply transferred back into the Health Department. For example the mooted new bureaucratic structure to implement and oversight the proposed Health Star Rating Front of Pack labelling system (see previous page) is equally an expensive and unnecessary duplication of work currently done by industry at no cost to the taxpayer.

SAVING

Establishment costs budgeted but not already incurred can be saved, and ongoing funding is not necessary as the existing budget for the Health Department includes funding of its own Public Health programs.

2.3. SAFETY INCIDENT REPORTING

AGENCY: Australian Competition and Consumer Commission (ACCC)

ISSUE: ***Scope of Government***

The Australian Consumer Law requires mandatory reporting by manufacturers, wholesalers and retailers to the ACCC within 48 hours of them becoming aware of a report of a safety incident involving goods. The threshold for reporting is that the incident required medical treatment.

PROBLEM

The notification requirement imposes a significant burden due to the reporting trigger of "becoming aware", the reporting threshold of "serious illness or injury" and the short time frame of 48 hours. This means that reports are often required based on mere allegations of harm, with only the most basic fact checking investigation by the manufacturer and usually well before any conclusions of causation can be determined. Further, reporting in practice is triggered by the mere act of the consumer seeking medical advice, because companies are not privy to the details of any ensuing medical treatment.

Since mandatory reporting commenced (1/1/2011), Food Standards Australia New Zealand has received 2887 food-related mandatory report referrals from the ACCC. This figure represents approximately 46% of all mandatory reports (food and non-food) received by the ACCC. A 2012 AFGC study of 457 food-related "incidents" showed that 75% were actually false (in the sense that the product was unrelated to the alleged harm), only 17 (4%) were actively followed up by the ACCC but satisfactorily resolved by the manufacturer. None resulted in a mandatory product recall.

This is an example of regulating a problem that does not exist. Manufacturers take their safety responsibilities seriously, and are highly responsive to consumer complaints: commercial factors ensure this. Mandatory reporting does not prevent harm, it is simply an expensive and burdensome system to report allegations of harm that in the vast majority of cases prove to be unsubstantiated.

EXAMPLE

A consumer complains to a supermarket that he consulted a doctor after experiencing a burning sensation after chewing gum bought from the store. He was given a medical certificate and told to take paracetamol for any pain. The supermarket informs the manufacturer's representative. No further details are available as the consumer cannot be contacted. This incident must be reported with 48 hours of the supermarket passing on the information to the representative.

SOLUTION

The statistics show that there is in fact no need for mandatory reporting. The additional benefit gained from government oversight is unclear. If some system must be retained, it needs to be more focussed: e.g. under previous therapeutic goods regulation, a reportable incident was defined as a situation where a person was hospitalised, with the cause of the hospitalisation confirmed as related to a product.

SAVINGS

The savings to the Government arise from the disbanding of a significant portion of the bureaucratic infrastructure built around safety notifications. This change would also be a significant contribution to the Government's red tape reduction targets.

2.4. MAXIMUM RESIDUE LIMITS

THE AGENCIES: Food Standards Australia New Zealand (FSANZ), Australian Pesticides and Veterinary Medicines Authority (APVMA)

ISSUE: ***More productive and efficient services***

Australia, like many countries internationally, regulates the maximum residue level (MRL) of agricultural pesticide and veterinary medicine residues that may be present in food crops and animal feedstocks. The regulation is highly specific as to the chemicals and the commodities or crops for which an MRL is provided. APVMA sets MRLs for domestic commodities, and FSANZ sets MRLs for imported foods.

PROBLEM

It is important to understand that these residues are present at very low amounts and give rise to no health or safety concern. The regulation has more to do with ensuring good agricultural practice and minimising total lifetime dietary exposure.

The regulation has grown incrementally to over 266 pages of detailed regulation as permissions are sought for new chemicals in specific crops. Applications are made without reference to other crops for which the chemical might be useful, leading to inconsistencies in permissions and levels even with closely-related crops, inherent in any “first come first served” approach to residue regulation. Detection level issues arise as test methods become more sensitive and able to detect and identify chemical residues at ever-decreasing amounts (“chase the molecule” tests with no relationship to any public safety risk). Responsibility for domestic and imported product regulation is split between two different Commonwealth agencies.

EXAMPLE

A recent case related to imported raspberries and blueberries from South America. Internationally, and in the country of origin, three pesticides are permitted to be used on raspberry and blueberry crops, but these are not recognised under Australian law. A paid assessment was required to be carried out by FSANZ for a change to the Food Standards Code to ensure continued market access for these berries, at a cost of tens of thousands of dollars and a timeframe of 6 months.

SOLUTION

There are three reforms required to address this unnecessary and burdensome regulatory approach: First, Australia should automatically accept imported foods that comply with the international (Codex Alimentarius) residue limits on the basis that there has been substantial and rigorous testing and approval by a globally regarded regulator. Failing to do so maintains an unjustifiable barrier to trade. Secondly, there should be a default MRL for agricultural and veterinary chemicals across all commodities to overcome “chase the molecule” test methods and to recognise the differing MRLs of trading partners. New Zealand has such a default MRL without any apparent safety problems arising. Finally, consideration should be given to rationalising the responsibilities and processes of the two Commonwealth agencies involved in setting MRLs.

SAVINGS

The proposed reforms would remove duplication, save regulatory costs across the two agencies, and avoid unnecessary regulatory assessment of residues that are internationally accepted or which fall within an acceptable default level.

2.5. TECHNOLOGY SOLUTIONS TO LABELLING CHALLENGES

AGENCIES: Department of Health (DoH), Australian Competition and Consumer Commission (ACCC), Food Standards Australia New Zealand (FSANZ), Therapeutic Goods Administration (TGA)

ISSUE: ***More productive and efficient service***

Food and grocery companies face ever increasing demands from regulators and government agencies to place more information on product labels. The 2011 Blewitt report on labelling policy went so far as to recommend mandatory public health messages in food labels (Recommendation 22).

PROBLEM

Labels are limited in size and already are required under current laws to carry between 11-15 statements. These laws make no distinction between a 10kg sack of rice and a small tin of tuna.

The usefulness of label information to consumers diminishes the more crowded with information the label becomes. Font sizes become smaller as designers try to marry marketing with compliance. Further, consumers are seeking out the specialised information they need utilising the mobile computing capability of smartphones. This era of mass personalisation and hyper mediation, where consumers can access information tailored to their specific needs or interests, any time anywhere via their smartphones should change the way governments think about delivering information.

Unfortunately, instead of looking for technology solutions, such as utilising the mobile computing capability of smartphones or in-store scanning technology, regulators seem stuck in a 1980's government-knows-best paradigm fixated on physical labels. The difficulty with this paradigm is that labels are highly static (usually remaining unchanged for between 1 and 5 years) and costly to change, even if changes are scheduled to take place in line with more general label update programs, especially due to compliance control and verification requirements.

SOLUTION

Consumer information printed on the physical label should focus on a core information related to food safety, key ingredients, core nutritional information and country of origin. This should be the limit of regulation in relation to labelling requirements. All other product labelling requirements should be reviewed to determine whether the information might, as an alternative to pack labelling, be delivered using technology solutions, which are less costly to implement, far more flexible, far easier to keep current and importantly, far more informative and interactive for consumers than a label ever could be.

The industry has already established "proof of concept" for this technology through the joint AFGC / GS1 "Go Scan" mobile phone app that products extended product information simply by taking a photo of a product barcode.

SAVINGS

There would be some savings to industry derived from better label management opportunities and reduced compliance costs. The biggest advantage is to the community who are provided with accurate and current information customisable to their individual needs. There are potential public health impacts where the information can be targeted to assist dietary choices aimed at reducing the impact of non-communicable disease.

2.6. FRONT PACK MEASUREMENT MARKING

AGENCY: National Measurement Institute

ISSUE: ***More productive and efficient service***

National trade measurement regulation is highly prescriptive as to the location, size, content and presentation of weight or volume markings on packaged goods for retail sale. Such markings are required to be "front of pack, in a minimum type size, in metric measures of no more than 3 significant figures, separated from any edge, other text or graphic by at least 2mm, in colour contrast to the background and oriented in the same direction as the major brand marking.

PROBLEM

Imported products, especially from the EU, often do not comply with Australia's highly prescriptive regulatory requirements, meaning they need to be relabelled with front of pack stickers, or to have Australia-specific packaging prepared, both of which are unnecessarily expensive solutions for what, in global terms, is a small fringe market. Even domestic products can be caught out by the high degree of prescription, as the legislation is somewhat obscure especially for SMEs.

Regulators contend that Australia's requirements are no more than those set out by international legal metrology standards, and this is true. It fails to declare that the international standards are set by those same regulators meeting together with their international counterparts, leaving open the risk that regulators, in the absence of clear policy oversight, are using the cover of international standards simply to maintain a particular status quo.

Although the introduction of shelf-based unit pricing under the Australian Consumer Law is not universal, its introduction serves to greatly diminish the importance and need for pack measurement markings which are a less easily used tool for comparing product value.

EXAMPLES

A soft drink beverage sought to have a modern design by aligning its brand name vertically. It retained a front of pack volume marking placed horizontally along the lower portion of the can. Labelling stock had to be discarded when it was pointed out that the measurement statement was not oriented in the same direction as the branding, even though the marking was in other respects clear and prominent.

A bottle of perfume in a presentation case imported from Europe contains a measurement marking on the rear of the package, as permitted under EU laws. On importation, the package must be over-stickered with a front of pack volume marking, diminishing its prestige presentation.

SOLUTION

Replace current overly prescriptive requirements with performance-based requirements similar to those in the EU that require the marking to be "*indelible, easily legible and visible … in normal conditions of presentation*", or those in the Food Standards Code (prominent, legible and in colour contrast) which apply to more important safety information, including allergy and date marking declarations.

SAVINGS

The issue has significant deregulatory costs savings for the cosmetic and personal care industry.

2.7. HEALTH, NUTRITION AND RELATED CLAIMS

AGENCY: Food Standards Australia New Zealand

ISSUE: ***More productive and efficient service***

Recent changes to the Australia New Zealand Food Standards Code impose new obligations in relation to previously unregulated (other than by the Australian Consumer Law) functional claims that do no more than indicate the role of particular nutrients as part or normal digestion and physiology. The new laws require that foods making such claims meet specified nutrient profiling criteria and that the claim either be specifically listed in a Schedule to the new Standard or else go through a detailed and expensive self-substantiation and notification arrangement.

In prescribing certain claims in a Schedule, the Standard draws on the work of the European Food Safety Agency (EFSA) that has been evaluating health claims in Europe for a number of years to a high standard.

PROBLEM

Leaving to one side the merits of the new laws (introduced with no evidence of market failure and without regard to the role of the ACCC and State/Territory consumer agencies to correct false or misleading claims), Food Standards Australia New Zealand insists on re-evaluating EFSA approved claims before incorporating them into the Schedule to the new Standard. FSANZ's resource restrictions means that many claims permitted to be made overseas cannot be made in Australia not because they are false or misleading, but because they have simply not been re-evaluated.

EXAMPLE

An EFSA reviewed, EU permitted claim may be made in relation to resistant starch and its promotion of a beneficial post-eating glycaemic response. Industry has asked that FSANZ consider adopting this claim as a priority, but it remains absent from the FSANZ work plan.

SOLUTION

All EFSA reviewed, EU approved health claims should be adopted in Australia without a detailed re-examination of the evidence that has already been reviewed by a highly credible and internationally renowned authority.

SAVINGS

Implementing adoption of EFSA-approved would free limited FSANZ resources for more worthwhile food safety matters. This is an issue of ensuring a legitimate Commonwealth function is delivered efficiently.

2.8. INDUSTRIAL CHEMICALS SIMPLIFICATION

AGENCY: National Industrial Chemicals Notification and Assessment Scheme (NICNAS)

ISSUE: ***More productive and efficient service***

Australia's costly and complex regulatory system for the management of chemicals extends across several Departments and jurisdictions. The over-regulation of chemicals and plastics has long been the subject of serious concern to industry. Particular issues raised are the duplication, complexity, and lack of proportionality of risk in the regulatory requirements.

PROBLEM

Australian regulation of the sector's products and ingredients –

- is increasingly out-of-step with other advanced nations (EU, USA, Canada & NZ);
- treats many low-risk products (like cosmetics & household cleaners) as if they are either hazardous industrial chemicals or medicines;
- seems driven to repeat full assessments of low-risk ingredients and products that have already been 'ticked off' as safe following comprehensive review by leading overseas regulators (and which Australian consumers can often readily purchase on-line anyway); and
- has become a barrier to innovation, delays or prevents introduction of new products, and is increasingly seen as a significant 'trade irritant'.

Regulation of this sector is well overdue for reform, as highlighted in the 2008 Productivity Commission Report initiated by the then Howard Government.

SOLUTION

Industry's proposals for a simpler, new regulatory industrial chemicals framework need look no further than New Zealand for a model of how to better regulate low-risk cosmetics and household products. This includes:

- Risk management through risk prioritisation of industrial chemicals with a focus on hazardous chemicals, where risk management decisions would be made by three independent expert bodies in the areas of OHS, public health and the environment – not by NICNAS;
- Harmonising the regulatory treatment of new industrial chemicals with that of other advanced economies to improve Australia's competitiveness and innovation opportunities;
- Acceptance of regulatory equivalence through the recognition of overseas assessments and decisions made by comparable regulatory authorities such as the EU, USA, New Zealand, Canada and Japan;
- Regulatory recognition of chemicals included on other Australian and comparable international inventories;
- Removing cosmetic products and ingredients from the scope of industrial chemicals regulation and harmonising their treatment with that of the EU, ASEAN economies and New Zealand; and
- Improving efficiencies and lowering the costs of regulation further through simple notification to NICNAS of certain low risk ingredients (such as polymers and non-hazardous new chemicals).

SAVINGS

NICNAS operations are cost-recovered, and so there would be little budgetary improvement from this reform. There would, however, be very significant red-tape and compliance cost reductions to industry.

2.9. ADDITIVE AND PROCESSING AID PERMISSIONS

AGENCY: Food Standards Australia New Zealand (FSANZ)

ISSUE: ***More productive and efficient service***

Food additives (colours, flavours, acidifiers, bulking agents, etc.), and processing aids (lubricants, enzymes, water and flour treatment agents, etc.) are all regulated in Australia by general prohibition subject to specific permission.

PROBLEM

The "command and control" regulatory approach means that any new additive or processing aid technology requires a regulatory approval process, which is time consuming, public (and therefore not sensitive to intellectual property considerations), possibly costly and uncertain in outcome. Even very small safety issues can provide a rationale for denying new technology where FSANZ is required to consider public health and safety but not competing interests such as the benefits of new technology or even the relative safety of the new technology compared to the technology that it is replacing.

In practice, the conservatism of Australian regulators makes it unlikely that Australia will be the first jurisdiction in which new technology is introduced, which means that Australian assessment of new technology will largely be an exercise in reviewing the work of overseas agencies based on the same dossier of safety data. This exercise of "reinventing the wheel" is either unnecessary where the outcome is the same as that determined internationally, or a barrier to trade and innovation if the conservatism of the Australian regulator either rejects the new technology or imposes idiosyncratic "Australia-only" conditions of use. Either way, both industry and the community lose.

EXAMPLE

New vegetable-derived colour extracts are now in common use throughout the EU. Permissions have not been sought in Australia because the colour manufacturers do not consider the Australian market to be of sufficient importance to go to the time and expense of making applications. No safety concerns have been identified in relation to the new natural extracts.

SOLUTION

AFGC does not propose abandoning the safety regulation of additives and processing aids, but does propose that industry be given access to new technology by permissions based upon credible overseas agencies such as the US FDA or the EU EFSA. This already occurs in relation to flavourings, where the Australian Standard adopts by reference permissions from the US and the EU. This same approach should be extended to other classes of additives and processing aids to ensure Australian manufacturers have access to the latest food technology.

SAVINGS

Efficiencies will be derived where FSANZ is not required to assess regulatory measures to approve additives and processing aids that already have been assessed overseas. Industry will be saved from making duplicative and unnecessary applications for such measures, as well as having access to modern food technologies to drive innovation.

2.10. REGULATION OF SUNSCREENS

AGENCIES: Therapeutic Goods Administration (TGA) and National Industrial Chemicals Notification and Assessment Scheme (NICNAS)

ISSUE: ***More productive and efficient service***

Sunscreens are regulated by three different agencies (if the overarching role of the ACCC is taken into consideration) depending on pack size and SPF factor and whether it is considered a primary or secondary sunscreen.

PROBLEM

The regulatory duplication causes inefficiencies, requiring different pack labelling and different compliance mechanisms and regimes for products produced in the same range, with the same formula, by the same manufacturer, but in differing pack sizes.

EXAMPLE

A moisturiser with a secondary sunscreen labelled as SPF 15 might have to deal with separate agencies, reporting requirements and costs depending on whether it is sold as a 300ml or 600ml pack.

SOLUTION

This issue is symptomatic of a deeper problem arising from the treatment of medicated cosmetic products as either therapeutic goods or as cosmetics. The problem is exacerbated when, in recent regulation, certain sunscreen ingredients used in cosmetics were transferred from the TGA to NICNAS, whereupon NICNAS decided to impose novel conditions of use that would restrict manufacturers' ability to import the ingredients. The last thing that the Australian community needs is regulators applying narrow, conservative criteria that limit manufacturer's ability to increase the sun protection of existing cosmetic products.

The logical solution in this case is that the TGA regulate "primary" sunscreens only as defined in ANZ Standard 2604:2012 (including those containing a secondary insect repellent), with cosmetics containing secondary sunscreens (including those currently regulated by the TGA) regulated by the ACCC, just like other cosmetic products. However, the recent overly-conservative decisions by NICNAS give industry cause for concern if that agency is to take on an expanded responsibility.

SAVINGS

Removal of the duplication of regulatory activity will generate some savings and having a single compliance regime will deliver red tape reductions to the industry/

2.11. REFORM OF THE FSANZ ACT 1991

AGENCY: Food Standards Australia New Zealand (FSANZ)

ISSUES: ***Consolidation of agencies and boards***

Under the *Food Standards Australia New Zealand Act 1991*, -

(1) the FSANZ Board consists of 12 members, governing a staff of less than 120 FTEs (up from a Board of 5 when the Authority was first established); and

(2) the Authority under s.23 can make non-reviewable "guidelines" specifying the form and content of applications to vary the Food Standards Code: any application to vary the Code that does not fully conform to the guidelines can be dismissed.

PROBLEM

(1) FSANZ resources are being wasted by the need to maintain and support a relatively bloated Board with duplication in composition (e.g. 3 members get appointed from organisations or public bodies relating to science or public health, but a further one is appointed by the CEO of the National Health and Medical Research Council).

(2) The mandatory "guidelines" are a triumph of form over substance: an application may be dismissed without any assessment as to its merits. Further, the guidelines are somewhat convoluted and hard to follow, and exhibit a tendency to require all information that might possibly be considered relevant to an application without considering whether the information is actually required – this is a particular disincentive to SME businesses making applications to vary the Food Standards Code when SMEs are strong innovative drivers in the food sector.

SOLUTION

(1) The FSANZ Board can easily be halved in size without sacrificing experience: a target of six or seven members would be attainable.

(2) The guidelines should be a guide and not mandatory (amending s.22), should be a reviewable instrument subject to disallowance, and should make specific provision for short form applications to promote more ready change to the Food Standards Code.

SAVINGS

There will be operational savings to FSANZ from a reduced Board structure.

Reforming the application guidelines provision will reduce red tape that discourages industry from making applications to vary the Food Standards Code.

2.12. REGULATION OF NOVEL INGREDIENTS / TECHNOLOGY

THE AGENCY: Food Standards Australia New Zealand (FSANZ)

ISSUE: ***More productive and efficient service***

Current regulations require pre-market approval for novel foods, nutritive substances, food that has been treated with ionising radiation and products of gene technology. The latter two require additional product labelling even when assessed as safe. Nanotechnology has been suggested as a further technology requiring regulation.

PROBLEM

All these regulations are based on a "precautionary principle", which states that new things need to be regulated until they have been proven to be safe, rather than on the basis of any established safety risk. The principle tends to over-estimate risks due to uncertainty over worst-case scenarios. AFGC accepts that the precautionary principle could be seen as the regulatory embodiment of social concerns around new products and technologies. At some point, however, the onus needs to be reviewed and a demonstrated risk of harm must be shown before such regulation is maintained.

Labelling of new technologies is often presented as being a consumer's right to know in making informed choices. Government-mandated labelling, however, may be perceived as a warning rather than as information.

EXAMPLE

Food irradiation is a safe and effective treatment to preserve food safety and prevent microbiological spoilage that is supported by the World Health Organisation and the FAO [5]. In Australia, foods cannot be irradiated except for specific exceptions and must be labelled as having been irradiated.

SOLUTION

Current food regulations relating to novel foods and nutritive substances should be replaced with specific list of substances that are not to be used, or only used in specific circumstances, as food or as an ingredient in food. This approach is currently used in relation to herbal and botanical ingredients and has worked well in delivering safety without impeding innovation.

Mandatory advisory statements should only be prescribed where a specific identifiable public safety issue exists. Non-label technology solutions (e.g. the GS1 Go Scan smart phone application) should be used for providing consumer information in relation to non-safety matters.

Any regulation imposed on new technology should have a sunset clause of 10 years so that Australian manufacturers are not impeded from adopting mature technologies to promote innovation.

SAVINGS

FSANZ would no longer be required to consider and assess applications for low-risk foods while retaining the ability to act swiftly to address safety concerns. Unnecessary application red tape for industry would be reduced.

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5 http://www.iaea.org/Publications/Booklets/foodirradiation.pdf

3. CONCLUDING REMARKS

The 2013 DAE Report in full makes sobering reading. Its executive summary is attached. It describes an industry doing its utmost to remain viable and competitive in the global market environment while facing severe domestic challenges. Food infrastructure capital is highly mobile and there is no basis to believe that Australia has any inherent right to it. To the contrary, Australia's current investment and manufacturing capability is under increasing commercial scrutiny to determine whether to move it offshore due to our costs, regulatory environment, geography and demographics.

This submission has deliberately not strayed into key areas such as workplace relations reform, taxation, energy pricing, fiscal management or infrastructure planning, and yet all this and more is required if Australia's prosperity is to be maintained beyond the mining boom. AFGC has left these issues to be addressed by those more able to propose effective reform, but this should not be interpreted as any indication of disinterest or lack of concern.

This submission focuses on immediate and pressing reforms of particular relevance to the food and grocery sector and able to be delivered. There are other structural reforms of potentially significant benefit that require further consideration, including –

- delivering economies of scale and aspirationally delivering more consistent and realistic risk assessment and management decisions by amalgamating within the Industry portfolio, or rationalising the operations of, product regulatory agencies (FSANZ, TGA, NICNAS and APVMA); and
- rationalising the operations of export trade agencies (DFAT, Agriculture, ABARE, etc.) to deliver more facilitative, co-ordinated, business-facing advocacy and service delivery.

Finally, this submission has not dealt with non-regulatory impediments to sectoral growth, largely because such issues are both outside the NCA's remit and are being addressed separately by industry itself. The duplication of audit requirements serves as the archetypal example of such an issue where industry can deliver solutions in response to reform needs at no cost to government.

AFGC commends the task of the NCA and submits its recommendations for consideration.

[redacted]

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