



Australian Government

Department of Health

31 August 2016

Regulation of Agriculture
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne VIC 8003

Dear Commissioners Lindwall and Baxter

Department of Health Submission to the Productivity Commission Inquiry into the Regulation of Agriculture

Thank you for the opportunity to comment on the Commission's Draft Report on the *Regulation of Australian Agriculture*.

The Department of Health, working with key other government agencies, has policy responsibility for food regulation. This submission provides an overview of the food regulatory system, and provides comment relating to two of the issues raised in this draft report: labelling of genetically modified food, and country of origin labelling for food.

Food regulation

Overview of the food regulatory system

Australia's food regulation system is a cooperative bi-national arrangement involving Australia and New Zealand. In Australia, responsibility for the food regulatory system occurs at all levels – Commonwealth, State, Territory and local governments.

The food regulation system is overseen by the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum) which has ministerial representatives from all Australian Governments (Commonwealth and states and territories) and the New Zealand Government.

The Forum has responsibility for:

- the development of domestic food regulation policy;
- the development of policy guidelines for setting domestic food standards;
- the promotion of harmonised food standards within Australia and with Codex Alimentarius (domestic and export standards with international food standards set by Codex Alimentarius);
- the general oversight of the implementation of domestic food regulation and standards; and
- the promotion of a consistent approach to the compliance with, and enforcement of, food standards.

FSANZ is an independent statutory authority responsible for the development and maintenance of food standards in the *Australia New Zealand Food Standards Code* (the Code). All food produced or manufactured in, or imported into, Australia must comply with requirements in the Code.

The Code sets out requirements for food in four chapters:

1. General food standards
2. Food product standards
3. Food Safety standards (Australia only)
4. Primary production standards (Australia only)

In addition to standards in the Code, guidance materials that are not legislated, but assist manufacturers, retailers and food officers interpret and apply the Code are also made available by FSANZ and individual State and Territory enforcement agencies. In Australia, enforcement of food standards is the responsibility of State and Territory enforcement agencies and the Department of Agriculture and Water Resources for imported food.

The food regulatory system has a role in preventing misleading conduct in relation to information presented on food. In order for this to occur there are close linkages between the food regulatory system and the Australian Competition and Consumer Commission (ACCC), New Zealand Commerce Commission (NZCC), and State and Territory fair trading bodies.

The food labelling hierarchy

In 2011 the Forum (convening as the Australia and New Zealand Food Regulation Ministerial Council) responded to the recommendations of *Labelling Logic: Review of Food Labelling Law and Policy (2011)* (the Blewett Review). Figure 9.1 on page 342 of the Commission's Draft Report is sourced directly from the Blewett Review, portraying a four tiered hierarchy.

As part of its response to the Blewett Review, the Forum endorsed a risk based hierarchy to guide decisions about food labelling. The agreed upon three tiered hierarchy lists in descending order of priority: food safety; preventive health; and consumer values issues. The Forum considered industry self-regulation the most appropriate mode of intervention for consumer values issues (such as organic and halal).

The Forum agreed to remove the 'new technologies' tier, agreeing that these will be considered on a case-by-case basis. The *Policy Guideline on the Labelling of Food Produced using New Technologies* (the Guideline) was endorsed by the Forum in June 2014, providing guidance on the expectations of regulatory (i.e. labelling) and non-regulatory measures of foods produced or processed using a new technology. The scope of this Guideline was limited to foods that require a pre-market safety assessment because they use a new technology. It is recognised that any labelling of products is for consumer information only and is not related to a public health and safety issue. The Guideline can be found at the following website: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-policy-guidelines#2>

Country of origin labelling (CoOL)

As the draft report notes (pages 346-354), new CoOL requirements were agreed by government in March 2016 and have been operational since 1 July 2016. Importantly, there is a two year transition period for businesses to implement the new labelling requirements.

While it is recognised that the new requirements impose additional regulatory burden on industry, it is hoped that the two year transition period will lessen this burden and the proposed amendments to Australian Consumer Law safe harbour defences will also mitigate the additional burden imposed by the CoOL reforms.

The Department of Health supports the reforms to CoOL for food and is satisfied that a continuation of a mandatory labelling scheme for priority foods is appropriate. The Department of Industry, Innovation and Science commissioned market research and engaged in a thorough consultation process in the development of these reforms. The reforms address consumer demands for clearer information on the origin of their food.

Mandatory labelling of genetically modified foods

As identified in the draft report (pages 361-364), the labelling of GM foods as required in Australia is not for health and safety reasons as only those GM foods assessed by FSANZ and found to be safe are approved for sale. The mandatory labelling of GM foods reflects a consumer value, and ensures that consumers have access to sufficient information to make informed choices about the foods they purchase.

The Australian Food Regulation System continually endeavours to balance improving the information on food labels to meet consumers' needs against maintaining marketing flexibility and minimising the regulatory burden on industry and barriers to trade.

An initial decision on how GM foods are labelled was made by the ministers responsible for food regulation in 2001. However, the ways on which GM foods are labelled were reassessed in response to the Blewett Review in 2011. The Blewett Review made several recommendations relating to foods produced using new technologies, including recommendations 28-33 which suggested that *only* foods or ingredients with altered characteristics or that contain detectable novel DNA or protein be labelled. This is consistent with current policy and the labelling requirements in Standard 1.5.2. Recommendation 29 recommended that the existing labelling provisions for GM foods should remain. Ministers agreed that the existing labelling provisions were appropriate.

Some food manufacturers choose to use foods and ingredients from conventional non-GM sources. In these cases, labelling is required only if approved GM material is unintentionally present in a quantity of more than 1% per ingredient in the final food. This regulatory limit was put in place to acknowledge that trace amounts of GM material may be present due to the bulk handling and transport of food commodities. A similar tolerance level of 0.9% per ingredient for the presence of GM material applies in the European Union.

The Code does not regulate 'GM free' and 'non-GM' claims. 'GM free' and 'non-GM' claims are made voluntarily by food manufacturers and are subject to relevant fair trading laws in Australia and New Zealand which prohibit representations about food that are, or likely to be, false, misleading or deceptive.

In addition, food prepared and sold from food premises and vending vehicles (e.g. restaurants, takeaway food outlets, caterers) is also exempt from GM food labelling requirements. In these cases the food business must supply consumers with information about the product which is not misleading or untruthful.


Changes to the Food Standards Code

Should there be appetite in the community for changes to the Code, these can be progressed via application from an interested party to FSANZ. New food regulatory measures are developed by FSANZ, either by application from any agency, body or person, or by a proposal prepared by FSANZ on its own initiative. The FSANZ Board's decision to approve standards, or variations, is then considered by the Forum, which has legislative authority.

When the Forum's consideration is completed, standards or variations are gazetted and registered as legislative instruments. Further detailed information on the process of amending the Code can be found in FSANZ's Application Handbook, available on the FSANZ website.

My Department would be happy to discuss these issues further with the Productivity Commission should you require any further information. The contact officer for this submission is Ms Elizabeth Flynn, Assistant Secretary, Preventive Health Policy Branch

Yours sincerely

Martin Bowles PSM
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