AUSTRALIAN FOOD & GROCERY COUNCIL

AFGC SUBMISSION

P1037: AMENDMENTS ASSOCIATED WITH NUTRITION CONTENT AND HEALTH CLAIMS

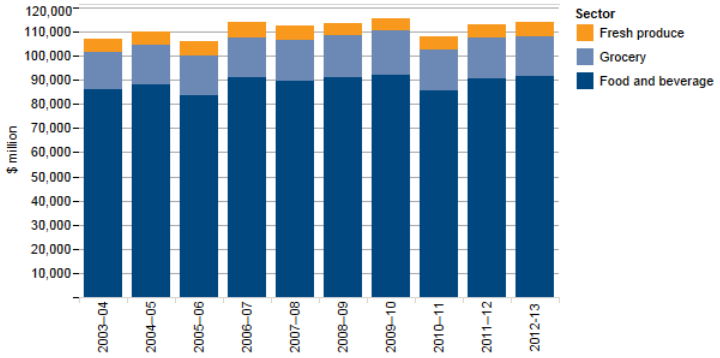
Sustaining Australia

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 178 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.

Fig 4.1: Composition of the industry's turnover ($2012-13)



Source: Based on ABS, catalogue number 8221.0, 8159.0 and 8155.0
Note: As outlined in chapter 3 of the State of the Industry 2014 report, caution should be applied when comparing data before and after the 2006 ANZSIC code changes.

With an annual turnover in the 2013-14 financial year of $114 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 is Australia's largest manufacturing industry. Representing 27.5 per cent of total manufacturing turnover, the sector accounts for over one quarter of the total manufacturing industry in Australia.

The diverse and sustainable industry is made up of over 27,469 businesses and accounts for over $55.9 billion of the nation's international trade in 2013-14. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry spends $541.8 million in 2011-12 on research and development.

The food and grocery manufacturing sector employs more than 299,731 Australians, representing about 3 per cent of all employed people in Australia, paying around $12.1 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. 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.

SUMMARY OF ISSUES

The AFGC makes this submission in response to the Food Standards Australia New Zealand (FSANZ) Call for Submissions of 25 May 2015 in re4latyion to Proposal P1037 – Amendments Associated with Nutrition Content and Health Claims.

The AFGC –

- SUPPORTS the need for clarity in relation to the treatment under Standard 1.2.7 of front-of-pack nutrition labelling schemes
- RECOMMENDS that such clarity be extended to front-of-pack nutrition labelling schemes other than the Government's Health Star Rating, in line with Government policies relating to contestability
- OPPOSES changes to the requirements in relation to percent daily intake (%DI) labelling outside of Nutrition Information panels (NIPs)
- SUPPORTS the proposed clarification of extended NIP content requirements for certain nutrition content claims
- OPPOSES the proposed move of extended NIP content requirements from Standard 1.2.7 to Standard 1.2.8.

FRONT OF PACK NUTRITION LABELLING

The AFGC concurs that greater clarity is needed in the relationship between Standard 1.2.7 and front-of-pack nutrition labelling schemes that do not more than repeat some or all of the mandatory or %DI information from NIPs.

The AFGC further agrees that such front-of-pack schemes should be excluded from the definition of 'nutrition content claim' – if the information on the back of pack NIP is not a claim, then the same information on the front of pack should not be a claim.

However, the proposal would confer special status on the Health Star Rating (HSR) scheme compared to other schemes (such as the food industry's Daily Intake Guide (DIG)), which is also a trademarked nutrition labelling scheme and which currently enjoys far wider and more extensive coverage than HSR.

To give regulatory preference to the HSR over its alternatives offends the Government's policy of contestability. An HSR license is a service and the Government should not, through regulation, engage in anti-competitive discriminatory conduct that does not allow alternative services (like DIG) to operate on a comparable basis. The Department of Finance's Contestability Framework should be applied to ensure that all equivalent schemes are regulatory in the same manner.

The AFGC according requires that FSANZ comply with Government policy and NOT confer on HSR a special status in comparison to other front-of-pack nutrition labelling schemes. The regulation should instead be drafted in a fashion that is not specific to HSR, but provides that the term 'nutrition content claim' does not include a statement outside of a NIP that does not more state the average quantity per serve, per 100ml or 100g, or the %DI of, energy, protein, total fat, saturated fat, carbohydrates, sugars or sodium.

Importantly, if such declarations are accompanied by qualifiers such as high or low, or if declarations are made in respect of other nutrients, the AFGC considers that these should fall within the scope of nutrition content claim and be regulated according to the existing terms of Standard 1.2.7, whether

made in the context of HSR, DIG or any other competing scheme. It would be a nonsense for a claim to outside the scope of Standard 1.2.7 if made in the context of HSR, but within the scope of Standard 1.2.7 if made in the context of DIG.

%DI LABELLING

The AFGC does NOT support the proposal to further regulate the declaration of %DI information outside the NIP, except in relation to the clarification in the proposed subclause (6) (ie that %DI declarations outside the NIP do not constitute a nutrition content claim), which is supported.

The current provision in Standard 1.2.8 states –

> ***7B Percentage DI or RDI information presented outside the panel***
>
> *(1) In this clause, DI or RDI information means the information in a nutrition information panel that is permitted or required by clause 7 or 7A.*
>
> *(2) DI or RDI information may be presented outside the nutrition information panel if –*
>
> *(a) the serving size is presented together with DI or RDI information; and*
>
> *(b) the food to which the DI or RDI information relates does not contain more than 1.15% alcohol by volume.*
>
> *(3) If more than one piece of DI or RDI information is presented outside the nutrition information panel, those pieces of information must be presented together.*

The proposal has the effect of requiring certain %DI declarations in NIPs as a pre-condition for stating %DI values outside the NIP. Nothing in the proposal indicates any regulatory failure in the application of this existing provision or provides any basis for further regulating such declarations. Further, such a measure would render some existing labels illegal, meaning that a WTO notification, RIS process, appropriate transitional period and stock-in-trade would all be required.

The AFGC is especially concerned that such a measure is hidden inside a Proposal whose innocuous title and summary fails to identify that such a significant change is contemplated. This measure has the potential for significant impact on the food industry and is a much greater measure than "*to address inconsistencies and lack of clarity*" is a significant and dangerous understatement.

The AFGC does not support this measure, but if it is to proceed then it should be separated from P1037 and progressed separately under a proposal with a more accurate and descriptive title.

EXTENDED NIP CONTENT

When Standard 1.2.7 was gazetted in January 2013, it included in column 2 of Schedule 1 requirements for extended content in NIPs for certain nutrient content claims. For example, claims in relation to salt or sodium require NIP entries for potassium (an entry for sodium being mandatory).

This proposal now seeks to make three distinct changes to such additional content requirements –

(a) Clarify that the declared values should be average (rather than absolute) values and align the terminology for such nutrients with other parts of the Code;

(b) Clarify that the declarations should be made in accordance with Standard 1.2.8 and provide direction as to the location of such declarations within the NIP; and

(c) Move the requirements from Standard 1.2.7 to Standard 1.2.8.

The first two of these changes are supported by the AFGC. They reflect industry's understanding of what was intended. However, AFGC cannot guarantee that no label change will be required as a result of this measure, and so as stated above a 12 month transitional period followed by the usual stock-in-trade provisions should apply unless FSANZ has evidence that no labels are affected.

Third change is NOT supported. While the location of provisions within the Code is immaterial to industry's obligation to comply, there are many small to medium enterprises in food manufacturing in Australia for whom the Code should be as transparent as possible. With this is mind, additional labelling that is triggered by a nutrient content claim should appear in conjunction with the regulation of that claim (ie in Standard 1.2.7), and the Standard for NIPs (Standard 1.2.8), already obtuse enough in most places, should not be cluttered with requirements that only apply in specific circumstances. This change was (appropriately) made as part of the gazettal of Standard 1.2.7 and should not be changed back to the pre-Standard 1.2.7 arrangements now, before the Standard has even come into full effect.

WTO NOTIFICATION

It follows from the comments above that the AFGC considers a WTO notification and risk impact assessment is required in relation to this proposal.

PROPOSED AMENDMENT COMMENTS

In terms of the proposed variations set out in Attachment A to the Call for Submissions –

Clause 3 Commencement and Schedule Item [1.1]

The provisions may require labels to be changed, and so a minimum period of 12 months should elapse before the changes come into effect, and the usual 12 months stock-in-trade allowance should then ensue. FSANZ has provided no evidence that all current labels would remain legal under the proposed measure.

SCHEDULE

Items [1.2], [2.1] and [3.1]	The definition should relate to all front-of-pack nutrition labelling schemes, as described above. Failure to do so would reflect poorly on the Government's good faith in promoting HSR as a voluntary co-regulatory initiative.
Items [2.2]	Supported
Items [2.3] to [2.5] [3.4] to [3.5]	Not supported, the requirements should remain in Standard 1.2.7.
Items [2.6] to [2.13], [3.3]	Supported
Items [3.6]	Not supported. There should be no change to extra-NIP %DI labelling other than to clarify that such declarations do not constitute a nutrition content claim.
Item [3.7]	This information relates to claims rather than nutrition labelling per se. It would be better stated in Standard 1.2.7, perhaps with an appropriate cross-reference note in Standard 1.2.8., meaning Standard 1.2.7 is then clear about the labelling consequences for making claims.
Item [3.2] and [4.1]	Supported

Item [3.8] to [3.11] Supported

As a final comment, the Explanatory Notes are not that explanatory, but rather largely repeat the terms of the provision. Taking for example the description of the change in Standard 2.9.2, there is no information as to how the changed references might affect the labelling of regulated products. Given that FSANZ is looking to discontinue user guides and similarly documents, and improvement in the clarity of the Explanatory notes such that describe impacts rather than changes would be appropriate.

[redacted]