



AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

AFGC SUBMISSION

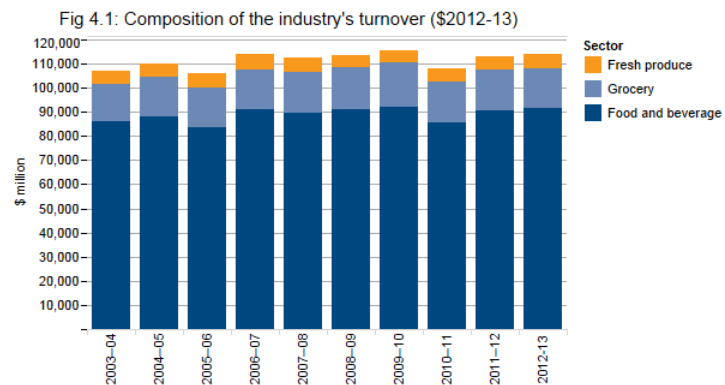
SENATE ECONOMICS REFERENCES
COMMITTEE INQUIRY INTO THIRD PARTY
CERTIFICATION OF FOOD

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.



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

The Australian Food and Grocery Council (AFGC) welcomes the Senate Economics References Committee Inquiry into Food Certification Schemes.

In summary, the AFGC –

- considers that third party certification schemes provide a useful means by which manufacturers and brand owners can provide to consumers an ***independent validation*** of a claimed characteristic of a product;
- notes that certifications are ***regulated for accuracy and truthfulness*** under the Australian Consumer Law;
- has conducted a survey of manufacturers and brand owners to gain ***quantitative and qualitative data*** on the Australian industry experience of certification scheme (provided as Attachment 1);
- interprets the survey results to demonstrate that, in general, certification schemes are operating as intended according to ***market-driven forces***;
- identifies potential reform in relation to ***certifier transparency***;
- draws attention to particular concerns in relation to ***meat slaughter and processing***; and
- recommends that the Australian Government work to simplify ***halal certification for export markets***.

The AFGC does not provide certification services for product claims. The AFGC neither encourages nor discourages its members regarding certification. As with any certification, each manufacturer or brand owner needs to decide for itself whether the commercial benefits of certification outweigh the costs.

FOOD CERTIFICATION SCHEMES

A third party certification scheme is a mechanism whereby a manufacturer or brand owner obtains certification from a third party about a product characteristic. For this certification to be of value, the certifying party needs to have credibility among the target audience. The value to the manufacturer or brand owner lies in the fact that a trusted and independent entity is confirming that the product has the claimed characteristic, and the value to the certifier lies in enhanced reputation as a trusted expert and in the certification fees paid.

From this definition it is clear that market forces play a large role in determining the success or failure of a certification scheme. If consumers do not trust the certifying entity, the certification has no value and will be discontinued. If the manufacturer does not get the expected return on investment from the certification, it will be discontinued.

In Australia, this market-driven approach to certification is underpinned by the principle that a manufacturer or brand owner is not required (for the domestic market at least) to get its products certified. It may avoid making a claim altogether, it may make a claim of its own initiative (without third party certification) or it may obtain a certification. Even for specialised claims such as halal, there is nothing in Australian food regulation or consumer law to prevent a manufacturer or brand owner from claiming its food to be halal, separate from any certification scheme. All claims must of course be accurate and truthful in order to comply with the Australian Consumer Law.

Why then do manufacturers and brand owners seek certification? Certification can serve a number of purposes –

- most directly, it provides credibility for a label claim;
- it may be an entry cost of doing business with a particular customer or retailer, or to gain access to a particular market – for example, halal certification allows entry into Middle East and South East Asian markets;
- it provides reassurance to concerned consumers about the certified characteristic (whether or not the certification is declared in the product label);
- it opens the opportunity for incremental business opportunities (eg selling to food service as well as retail), leading to better productivity and higher factory utilisation;
- it can fulfil corporate charter requirements and ‘good corporate citizen’ measures; and
- it acts as a compliance measure for claim substantiation (ie the product label claim might be ‘organic’ which is then substantiated by way of a third party organic certification).

FOOD SAFETY AND QUALITY CERTIFICATION

Food safety is of paramount importance to industry, the Government and especially to consumers. Such a statement is perhaps so obvious that it is often assumed, but the AFGC's perspective is predicated on this truth: that the first and foremost concern of consumers is not the claims and logos that appear in labels, but rather goes to the fundamental question of whether this food is safe for me and my family to eat.

In Australia, and indeed most modern economies, food safety is assured to the extent possible through processes of hazard identification, and control point identification for risk minimisation and mitigation. The AFGC understands that this inquiry is not seeking to address supply chain safety and quality certifications undertaken primarily for regulatory compliance and/or quality assurance, even though such certifications are third party assurances about product characteristics. Rather, it understands this inquiry to be concerned with third party certifications that are primarily aimed at consumer communications. While in some instances there are quality and safety system accreditations that might appear on label (eg ISO9000, etc), this is not a common practice.

Nonetheless the Committee should note the significant work being undertaken by the food sector to strengthen and standardise food safety audits. Safety audits are undertaken for regulatory compliance, as a result of manufacturer requirements or to satisfy retailer requirements, and at present there is relatively little recognition by one stakeholder of safety audits undertaken for another, even though the safety audit can be standardised against internationally accepted protocols. This creates the circumstance where a company might undergo 10 to 15 different safety audits in a year, all looking at the same things. This duplication places a burden on auditors and on the audit process where standardisation and recognition could drive better outcomes for consumers and for industry.

The AFGC is therefore working with stakeholders, including government authorities, retailers, auditors and manufacturers, to develop a system for the mutual recognition of safety audits undertaken in accordance with international standards. This project is expected to generate some market efficiencies through the avoidance of duplication, but it also directed to making the safety audit process more robust – by removing duplication, auditors and businesses will be able to spend more time and effort on the safety audits that are undertaken.

REGULATION

All certification schemes are regulated by the general consumer protection provisions in Schedule 2 of the *Competition and Consumer Act* (the Australian Consumer Law). This means –

- it is unlawful to make a representation that is misleading or deceptive or likely to mislead or deceive, including by way of a certification;
- it is both unlawful and a criminal offence to make a false or misleading representation that a product has a history or characteristic that it does not have, including by way of a certification; and
- it is both unlawful and a criminal offence to represent that a product has a sponsorship or approval that it does not have.

These protections provide a significant degree of consumer protection around the validity of certifications, and are enforced by an active and resourced regulator in the Australian Competition and Consumer Commission.

Some laws provide further legal frameworks for certifications. Standard 1.2.7 of the *Australia New Zealand Food Standards Code*, for example, exempts the certifications of public health promotion entities from some requirements relating to health claims.

SCOPE OF CERTIFICATION

There are numerous opportunities for Australian businesses to seek certifications in areas they consider important to their customers. These include –

- nutrition (eg National Heart Foundation Heart Tick)
- dietary choice (eg organic, vegan)
- ethical sourcing (eg anti-slavery, fair trade)
- origin (eg Australian Made Australian Grown kangaroo in triangle)
- animal welfare and production (eg RSPCA approved farming system)
- sustainability and the environment (eg dolphin friendly tuna, sustainable fisheries)
- religion (eg halal, kosher)
- food quality and safety (eg HACCP, ISO).

Within each of these categories there are a number of certifiers providing certification services. For example, there are over 20 bodies in Australia offering halal certification. Manufacturers and brand owners are thus able to ‘shop around’ in most instances when obtaining certifications, although certain certifiers are perceived to offer premium products.

MANDATORY LABELLING?

From the above dot points, the value of a certification to the manufacturer or brand owner is not restricted to a logo in a label. In fact a certification may be valuable without being included in product labels at all. It is the manufacturer who pays for

the certification and who should therefore be free to decide when and how that certification is to be used.

A further consideration is that labelling is a costly exercise with long lead times. A manufacturer or brand owner might, for example, obtain a sustainable palm oil certification in relation to a product with that ingredient, but despite its best endeavours may be unable to source sustainable palm oil at all times. In such a circumstance, the company might choose NOT to include the certification on the label so that in the eventuality of unpredictable supply, it would not need to relabel the product. At times when the product contains sustainable palm oil, the certification can be communicated to interested consumers through call centre contacts or online.

Australian consumers enjoy the benefit of a great deal of information being provided through the mandatory labelling requirements in the Food Standards Code. These requirements provide detailed information about the food's identity, traceability, safety, composition, nutrition, quantity, storage, use and origin. These requirements ensure the consumer is able to identify key information about health, safety and appropriate use.

The AFGC therefore does not support any proposal to require certifications to be included in product labels because they are not necessary for health, safety or informed choice. Certifications are rather discretionary marketing activities of the manufacturer or brand owner and should remain so.

IS IT A TAX?

A key insight is that manufacturers and brand owners in Australia operate in a globally exposed market with a high degree of retail market concentration. To survive, manufacturers and brand owners need to be efficient and price competitive, and this means that certifications that do not deliver value to the manufacturer, in one way or another, are not maintained. Put somewhat bluntly, manufacturers will only pay a dollar for a certification if they expect to get more than a dollar back in sales, whether directly or indirectly. If they pay a dollar and only get 80c worth of value, they will drop the certification.

This is an important principle because it addresses the concern in relation to the so-called 'halal tax'. Manufacturers do not have to be halal certified, and can under existing law make halal claims without being certified. They will only maintain a halal certification if the certification creates more value than it costs. The net effect of the certification must therefore be beneficial, or it will be dropped.

CERTIFICATION TRADE MARKS

Certifying institutions usually safeguard the integrity of their scheme through the use of intellectual property (a trade marked logo) which is then licensed to authorised users. This enables the certifier to control unauthorised use.

A special class of trade marks has been created in Australia, called a certification trade mark (CTM). CTMs differ from other registered trade marks in that they require a set of public rules which must be met in order for that manufacturer to be able to display the CTM. These rules and the process by which compliance will be assessed are reviewed and approved by the ACCC prior to registration in order to establish that the rules are not contrary to public benefit or likely to raise any concerns relating to competition, unconscionable conduct, unfair practices, product safety and/or product information.

Not all certification logos are registered as CTMs, but those that are might be said to be more transparent to consumers due to the public nature of the requirements and processes involved in the certification. However, operating a CTM is a more expensive exercise for certifiers, costs which are ultimately borne by the certified manufacturers through fees.

Without evidence of significant regulatory failure, the AFGC does not consider that certification schemes should be mandated to be CTMs. Rather, the AFGC highlights that there is a mechanism within existing regulation for certifiers to make their schemes more transparent and accountable should they see the benefits in doing so.

CERTIFICATION COMPLIANCE COSTS

Certification schemes do involve costs for participation. As noted above, these costs need to be outweighed by the benefit to the manufacturer or brand owner, or the certification is simply not maintained.

Costs to a business in obtaining certification might include –

- Changing operations, reformulating products or modifying ingredient sourcing in order to qualify for certification;
- Certification fees;
- Compliance costs such as certifier visits to facilities, auditing of processes, supply chain and ingredients; and
- Labelling costs where a logo is to be included in packaging.

Manufacturers and brand owners make a commercial call as to whether the costs of certification are outweighed by the benefits obtained, and in particular the direct and

indirect benefits to consumers (bearing in mind that some consumers will be more interested in a particular certification than others).

This is most evidently shown in the well-publicised case of the Fleurieu Milk and Yoghurt Company from South Australia, who in November 2014 ceased its halal certification due to what the ABC called ‘an aggressive social media campaign’ and, as a consequence, lost a \$50,000 per annum contract with Emirates airline. By May 2015, Fleurieu had re-certified and regained its contract.

The key insight from the AFGC’s position is that the company had the right to make these decisions based on its knowledge and awareness of its consumers’ needs and preferences. Companies should not, in contrast, be coerced into decisions by threats of abusive campaigns or secondary boycotts. AFGC members have voiced concerns over the impact on consumer contact staff in particular of abusive anti-halal calls and mail - such behaviour should neither be encouraged nor condoned by this Inquiry.

AFGC MEMBER SURVEY

Attached to this submission are the outcomes from a survey undertaken by the AFGC of its members and others in the food manufacturing sectors. The survey was undertaken to provide this Inquiry with some quantitative assessment of industry perspectives on the role, value and practical experience of product certification.

Participants were self-selecting, so due caution should be exercised against over-interpreting the results. While the survey garnered over 100 responders, not all responders answered every question, and so results need to be read in the context of the responses to the particular question. Finally, no statistical analysis has been undertaken to determine whether the results are statistically significant, particularly where the differences between responses are small.

With this in mind, the results of the survey do provide some insights –

- Responders to the survey come from a variety of business scales ranging from small enterprises to multinationals, with SMEs well represented (Q1).
- Responders indicate a wide spread of certifications are obtained, with all categories of certification well represented (Q3)
- No single type of certification stands out as being especially influential (Q4). Similarly, no single type of certification stands out as being especially costly or hard to obtain (Q5-Q6).
- The main rationale for obtaining a certification that the manufacturer or brand owner would not itself have chosen is customer (usually retailer) demand

(Q8). Anecdotally, retailer demands for certification are usually in the areas of environment, production methods (eg free range) and dietary choice (eg organic).

- Companies are able to discontinue certifications, and do so especially where the certification is not delivering the expected value or where the product has changed and not been re-certified. Consumer and retailer pressure are also factors.
- Companies do get certifications that they do not declare on label, for a number of reasons. The most-identified reason for not declaring the certification is that the certification is of value to a limited audience only, and so the certification was obtained to provide assurance should a member of that limited audience make contact (Q10).

These insights do not provide evidence of widespread abuse in relation to third party certifications, although the retailer demand for certification does stand out. In economic terms, however, obtaining such a certification to meet a customer need is simply a cost of doing business with that customer, rather than a market failure.

It is also noteworthy that 2 responders indicated that they were the subject of boycott threats in relation to certification. The Competition and Consumer Act prohibitions in relation to secondary boycotts (where a person seeks to affect a business by encouraging others to boycott goods or services) has exceptions for political and environmental activism, and such boycott activities in relation to product certification are likely not prohibited under one or both of these exemptions.

REFORM

The AFGC considers that in the majority of cases, food certification schemes in Australia operate according to market-driven factors that drive efficient and effective outcomes. The AFGC Member Survey did not provide any evidence of widespread abuse or market distortion. However, there are three specific areas where certification scheme reform might be considered – improving consumer transparency, meat slaughter and international market access.

CONSUMER TRANSPARENCY

A common problem in market-driven systems is that of information asymmetry – in particular where consumers do not have sufficient information to enable them to correctly interpret or evaluate product label information. This is particularly so in relation to technical claims such as free trade, environmental sustainability and provenance: the greater the element of consumer trust, the greater the responsibility for transparency.

In the case of third party certification, this is a significant issue as consumers attach value to certification logos. The question is whether *interested* consumers (not all consumers will be engaged in relation to every logo endorsement) have access to enough information to enable them to properly evaluate what the logo in fact represents. Manufacturers and brand owners are often legally constrained by the certification license agreement as to what can be said in relation to the logo, meaning that the task of providing this information falls to the certifiers themselves.

In particular, the information that consumers might need to assess the meaning of a logo includes some or all of the following to varying degrees –

- Who is the certifying body?
- What is the certifier's competence to provide certification, in terms of subject matter expertise and audit / compliance skills?
- What does a company need to do in order to be certified or remain certified?
- What checks or audits are undertaken to ensure the certification is used properly, and what is the experience of the auditor?
- Is the certification a profit-making enterprise or run only as cost-recovery?
- To what purposes are profits (if any) from certification fees devoted?

In the case, for example, of halal certification, such transparency might involve the certifier making available to consumers -

- The legal entity issuing the certification, and whether it is commercial or not-for-profit
- Its authority to issue certification
- Any limits on the acceptance of the certification (eg by country or by denomination)
- How a company obtains and maintains the certification
- What checks are undertaken to audit the certification, who undertakes such checks and what is their qualification to undertake the audit
- How consumers might check whether a claimed certification is valid
- What sorts of fees and charges are levied (description rather than amount)
- Whether the certification scheme is run not-for-profit or as a commercial venture, and if commercial, the uses to which profits are devoted.

A similar list could be developed in relation to environmental certifications, or organic certifications. The issue of transparency is certainly not restricted to halal certifications.

The AFGC considers that, in the first instance, it is incumbent on certifiers to improve the recognition and trust in their program by embracing greater

transparency. It is in the certifier's interest to do so as it increases the value of their certification. It would further enhance the reputation of certifications as a class by promoting consistency of disclosed information, enabling consumers and manufacturers to better judge the nature of the certification being provided.

MEAT SLAUGHTER

While for most foods religious certification is not especially problematic, the requirements in relation to livestock slaughter mean that meat processors face higher fees and compliance burdens in order to be certified. In particular, the requirements around personnel, method of killing, processing and audit are especially costly for Australian meat processors seeking halal certification (eg for export markets).

The AFGC understands that processors seek to limit these costs by deriving halal certified meat from a limited number of abattoirs only – typically those licensed by the Department of Agriculture for meat exports – and undertaking the remainder of the processing for the domestic market at other abattoirs. The excess capacity of the export-licensed abattoirs also serves the domestic market for halal meat.

The Department of Agriculture operates the export license system for halal-certified abattoirs and for the licensing of Muslim slaughter personnel. These administrative arrangements should be reviewed against Government policies for best-practice regulation to ensure they remain as efficient as possible.

INTERNATIONAL MARKET ACCESS

Halal certification can be a requirement for accessing international markets. The global Muslim population is estimated at 1.6 billion, often located in countries reliant on food imports from around the world. The AFGC is aware of estimates that up to \$13 billion of Australian agri-food products are exported to Islamic societies annually which requires, or would benefit from, halal certification.

The problem is the arrangements for securing halal certification in Australia are often set by the importing country. In particular, the concern arises where the export market recognises only a small subset of 'authorised' Australian certifiers and where there is no consistency between export markets as to which Australian certifiers are recognised. This leads to the situation where an exporter might be required to obtain multiple halal certifications to export to different markets. The Department of Agriculture has a webpage devoted to this issue – see <http://www.agriculture.gov.au/export/food/meat/elmer-3/list-islamic-halal-certification>

This situation also creates a quasi-monopoly for approved certifiers, providing no competitive force to encourage innovation and efficiency and manage costs. One free text response to the AFGC survey highlighted having to pay for first class air

travel for a short factory visit as an example of this lack of competition. Again, it would be wrong to judge all halal certifiers by this single incident – the AFGC is aware from its members that some halal certifiers seek to drive efficiencies, for example through the development of electronic certificates that can paperlessly accompany product through its supply chain.

It is perhaps naïve to hope that one halal certification might satisfy the disparate religious authorities across the varied cultural and economic Islamic world, and in a sense obtaining the ‘correct’ certification for an export market is simply a cost of doing business in that market. However, it would appear there is opportunity for Australia’s trade negotiators to raise this issue in appropriate bilateral and multilateral contexts as a potentially significant non-tariff barrier to trade, and it would likely reduce the costs of Australian exporters if the current arrangements could be rationalised.

A further concern in relation to meat exports is the export market requirement for Australian halal certifications to be individually approved for each shipment, for example by the local embassy or chamber of commerce. The fees for such approvals can be significant. While this again can be characterised as a cost of doing business in that market, such documentary requirements remains something of a non-tariff trade barrier that could be the subject of trade negotiation.

In a recent submission (30 June 2015) to the Senate Standing Committee on Rural and Regional Affairs and Transport inquiry into the effect of market consolidation on the red meat processing sector, JBS Australia Pty Ltd submitted that in 2014, it spent \$2.4 million on halal certification costs by approved religious certifiers.

This highlights a possible area for greater involvement by the Departments of Agriculture, Industry and Foreign Affairs and Trade in facilitating halal exports. This is not an issue of consumer communications but rather of trade facilitation. The AFGC is aware of section 116 of the Constitution (prohibiting the establishment of any religion by the federal Parliament) and this will need to be considered in the context of any proposals.

Meat processors are understandably frustrated by the costs and uncertainties inherent in current arrangements. These uncertainties, it must be stressed, do not arise from local halal certifiers but from the governments in our export markets establishing uncertain practices and procedures for accepting certifications.

To illustrate the importance of this issue, according to Meat and Livestock Australia *Fast Facts 2014 : beef*, in 2013-14, Australia exported 70% of its total beef and veal production, worth \$6.45 billion, to over 100 countries (DA/ABS). The beef industry (including live cattle exports) alone accounts for 17% of Australia’s farm export value, with Australia being the third largest beef exporter (after China and India).

The alternative to halal slaughter and processing in Australia is live animal export. According to Meat and Livestock Australia's *livestock export industry statistical review* (available at <http://www.export61.com.au/livestock-exports>), Australian live cattle exports totalled 633,703 head in 2012-13 (down 7% on 2011-12), valued at A\$588.7 million FOB. The two biggest markets for live cattle exports are Indonesia (\$174 million FOB) and Israel (\$49.1 million FOB), both markets having a significant religious dimension.

The AFGC supports call by Australia's major meat exporters for greater government to government involvement in trade facilitation around halal certification to improve the consistency of local certifier recognition, facilitate market access and reduce costs.

CONCLUSION

In conclusion, the AFGC –

- considers that third party certification schemes provide a useful means by which manufacturers and brand owners can provide to consumers an independent validation of a claimed characteristic of a product and that, in general, certification schemes are operating as intended according to market-driven forces;
 - notes that certifications are regulated for accuracy and truthfulness under the Australian Consumer Law, and that there is provision for certification trade marks to be administered by the Australian Competition and Consumer Commission;
 - provides the Inquiry with the results of a survey of manufacturers and brand owners to gain quantitative and qualitative data on the Australian industry experience of certification scheme (provided as Attachment 1);
 - identifies potential reform in relation to certifier transparency;
 - draws attention to particular concerns in relation to meat slaughter and processing; and recommends that the Australian Government work to simplify halal certification for export markets.
-