

Chapter 2

Current requirements in relation to labelling seafood and seafood products

2.1 The Australian food regulatory system involves all three levels of government – the Australian Government through Food Standards Australia New Zealand (FSANZ) and the Health, Industry and Agriculture portfolios; state and territory governments; and local governments.¹ Under the food regulation system, policy decision making is separated from the development of food regulatory measures.²

2.2 FSANZ is an independent statutory authority established under the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). FSANZ is responsible to develop and maintain food standards for Australia and New Zealand. These standards, including for labelling, apply to food produced for sale in, or imported to, Australia and New Zealand.³ The standards are contained in the Australia New Zealand Food Standards Code (the Code). All foods, whether produced or imported for sale in Australia, are required to comply with the food safety and labelling requirements in the Code.

Australia New Zealand Food Standards Code

2.3 When developing food standards, FSANZ's primary objectives, in order of priority, include:

- protection of public health and safety;
- provision of adequate information relating to food to enable consumers to make informed choices; and
- prevention of misleading or deceptive conduct.⁴

2.4 Enforcement of the Code is the responsibility of state and territory enforcement agencies and, for imported food at the Australian border, the Department of Agriculture.⁵ In New South Wales (NSW), as a case in point, the NSW Food Authority is the regulatory agency responsible to ensure compliance with the *Food Act 2003* (NSW) which applies the Code within that state.⁶

1 Department of Agriculture, *Submission 11*, p. 3.

2 Department of Health, *Submission 22*, p. [1].

3 Food Standards Australia New Zealand, *Submission 5*, p. 3.

4 Food Standards Australia New Zealand, *Submission 5*, p. 3.

5 Food Standards Australia New Zealand, *Submission 5*, p. 3; Department of Health, *Submission 22*, p. [2].

6 NSW Food Authority, *Submission 19*, p. 2.

2.5 Part 1.2 of the Code – Labelling and Other Information Standards (contained within Chapter 1 – General Food Standards) details the eleven labelling standards and requirements relevant to all foods as follows:⁷

- Standard 1.2.1 – Application of Labelling and Other Information Requirements
- Standard 1.2.2 – Food Identification Requirements
- Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations
- Standard 1.2.4 – Labelling of Ingredients
- Standard 1.2.5 – Date Marking of Packaged Food
- Standard 1.2.6 – Directions for Use and Storage
- Standard 1.2.7 – Nutrition, Health and Related Claims
- Standard 1.2.8 – Nutrition Information Requirements
- Standard 1.2.9 – Legibility Requirements
- Standard 1.2.10 – Characterising Ingredients and Components of Food
- Standard 1.2.11 – Country of Origin Labelling [Australia only].⁸

2.6 Standard 1.2.2 requires the inclusion of a name or description of the food on a label that is sufficient to indicate the true nature of the food where there is no name prescribed in the Code for that food.

2.7 To ensure accuracy and truth in labelling, the *Competition and Consumer Act 2010* (CC Act) contains prohibitions against misleading or deceptive conduct and against false or misleading representations, including in relation to the place of origin of goods.⁹ The CC Act specifies that, where goods satisfy certain requirements, it is permissible to make specific origin claims in relation to those goods without contravening the law.¹⁰

2.8 The Code does not provide a prescribed name for seafood or seafood products. However, Chapter 2 and specifically, Standard 2.2.3 details the requirements in relation to fish and fish products. It includes requirements to label certain formed or joined fish products with safe cooking instructions. An editorial note (rather than a mandatory provision) in relation to that standard states:

7 Food Standards Australia New Zealand, *Submission 5*, p. 4.

8 Australia New Zealand Food Standards Code, Part 1.2 of Chapter 1, <http://www.foodstandards.gov.au/code/Pages/default.aspx> (accessed 17 September 2014).

9 Department of Agriculture, *Submission 11*, p. 3.

10 Department of Agriculture, *Submission 11*, p. 3.

This Standard does not define specific names for fish. An Australian Fish Names Standard (AS SSA 5300) has been published which provides guidance on standard fish names to be used in Australia.¹¹

2.9 Standard 1.2.4 requires that the label on a package of food includes a statement of ingredients. FSANZ noted that ingredients must be declared using either the common name of the ingredient, a name that describes the true nature of the food or, where applicable, a generic name as specified in the standard. The generic name 'fish' may be used in the statement of ingredients. However, if the ingredient is a crustacean, the specific name of the crustacea must be declared.¹²

Country of origin labelling requirements

2.10 Standard 1.2.11 sets out the requirements for mandatory country of origin labelling. It applies to both domestic and imported foods.

2.11 The standard requires packaged food to be labelled with:

- (a) a statement on the package that identifies where the food was made, produced or grown; or
- (b) a statement on the package –
 - (i) that identifies the country where the food was manufactured or packaged; and
 - (ii) to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients.

2.12 Some packaged foods are exempt from country of origin labelling. These foods are:

- made and packaged on the premises from which they are sold;
- delivered packaged, and ready for consumption, at the express order of the purchaser;
- sold at a fundraising event; or
- packaged and displayed in an assisted service display cabinet.¹³

11 Australia New Zealand Food Standards Code, Chapter 2: Standard 2.2.3 – Fish and Fish Products, <http://www.foodstandards.gov.au/code/Pages/default.aspx> (accessed 8 September 2014).

12 Food Standards Australia New Zealand, *Submission 5*, p. 5.

13 Standard 1.2.11 does not apply to a food that is offered for immediate consumption where the food is sold by restaurants, canteens, schools, caterers or self-catering institutions, prisons, hospitals, or similar institutions such as nursing homes listed in clause 8 of the standard. Food Standards Australia New Zealand, *Submission 5*, pp 5–6. Food for immediate consumption otherwise termed cooked or pre-prepared seafood is considered in Chapter 3.

2.13 Standard 1.2.11 requires unpackaged fish (including fish that has been mixed or coated with one or more other foods), fruit, vegetables, nuts, spices, herbs, fungi, legumes, seeds, pork, beef, veal, lamb, hogget, mutton and chicken (or a mix of these foods) to be labelled with a statement on, or in connection with, the display of the food:

- identifying the country or countries of origin of the food; or
- indicating that the food is a mix of local and imported foods or a mix of imported foods.

2.14 In addition to the specific requirements for food labelling in the Code, Australian consumer law (ACL) as laid out in the CC Act requires that statements made regarding food products, including in relation to the place of origin of goods, must not be false, misleading or deceptive.¹⁴

2.15 ACL provides defences, referred to as 'safe harbours', to proceedings brought under particular sections of the ACL relating to false or misleading country of origin claims about goods. The particular types of country of origin claims that the safe harbour defences cover include 'made in', 'produce of' and 'grown in'.¹⁵

Traceability requirements

2.16 Traceability allows food businesses to target the product(s) affected by a food safety problem, minimising disruption to trade and any potential public health risks. The Code's Chapter 3 (Food Safety Standards) and Chapter 4 (Primary Production and Processing Standards) specify requirements for food businesses to ensure they can trace food received and sold by the business. These standards are consistent with international standards (Codex Principles For Traceability/Product Tracing As a Tool Within A Food Inspection And Certification System CAC/GL 60–2006) and operate under the principle of being able to trace food products 'one step back' and 'one step forward' in the food supply chain.¹⁶

2.17 Standard 4.2.1 – Primary Production and Processing Standard for Seafood, states that a 'seafood business must maintain sufficient written records to identify the immediate supplier and immediate recipient of seafood for the purposes of ensuring the safety of the seafood'. For example, if a business fillets fish caught by another business, the 'immediate supplier' is the business that caught the fish. The 'immediate recipient' is the business that purchased the seafood from the seafood business, that is, the 'immediate customer'.¹⁷

14 Department of Health, *Submission 22*, p. [2].

15 Food Standards Australia New Zealand, *Submission 5*, p. 6.

16 Food Standards Australia New Zealand, *Submission 5*, p. 6.

17 Food Standards Australia New Zealand, *Submission 5*, p. 6.

2.18 The FSANZ Act also requires standards to be based in risk analysis using the best available scientific evidence, promote consistency with international standards, promote an efficient and internationally competitive food industry, and promote fair trade in food products. Standards are also required to be developed with regard to policy guidelines developed by the Legislative and Governance Forum on Food Regulation (Forum), good regulatory practice and relevant New Zealand standards.¹⁸

Policy guidelines for setting domestic food standards

2.19 The Australian New Zealand Forum on Food Regulation (Forum) comprises federal Australian and New Zealand Ministers with responsibility for food along with their state and territory counterparts. The Forum is responsible to develop domestic food regulatory policy and policy guidelines for setting domestic food standards. FSANZ must have regard to ministerial policy guidelines and advice in developing food standards and other food regulatory measures, including those relating to food labelling. The Forum can also adopt, amend or reject standards and request that they be reviewed.¹⁹

Review of food labelling and conceptual framework

2.20 In 2009, the Australia and New Zealand Food Regulation Ministerial Council tasked an independent panel to undertake a comprehensive review of food labelling law and policy. On 28 January 2011 the review panel, chaired by Dr Neal Blewett AC, presented its report, *Labelling Logic: Review of Food Labelling Law and Policy 2011* (Labelling Logic). The Labelling Logic review (or Blewett review) report contained 61 recommendations. The Forum agreed on a response to the recommendations in December 2011 and subsequently developed an implementation plan for actions agreed in the response.

2.21 The Forum agreed to a recommendation for the development of a conceptual framework for food labelling. The framework has guided Australia's consideration of a number of food labelling issues, including front-of-pack food labelling and the display of nutrition content and health claims on food labels.²⁰

2.22 The framework is underpinned by a risk-based issues hierarchy for application in the development of food labelling policy. The three tiers of the issues hierarchy include:

- food safety – direct, acute and immediate threats to health. It particularly relates to poisoning and communicable diseases.

18 Food Standards Australia New Zealand, *Submission 5*, p. 3. The Department of Health refers to the Forum as the Australian New Zealand Forum on Food Regulation. *Submission 22*, p. [1].

19 Department of Health, *Submission 22*, p. [1].

20 Department of Health, *Submission 22*, p. [3].

- preventive health – including the indirect, long-term impacts on health and particularly chronic disease; and
- consumer values issues – to reflect consumer perceptions and ethical values, including consumer sustainability and provenance preferences.²¹

2.23 All changes to the Code, including developing new food standards and evaluating proposed changes to existing food standards, are based on a risk analysis process and require cost-benefit analysis and public consultation.

2.24 Labelling in relation to consumer values should generally be initiated by industry in response to consumer demand, with the possibility of some specific methods or processes of production being referenced in regulation, where this is justified. Usually, any regulatory action would be under consumer protection law rather than food regulation.²²

2.25 As the Code is focused on food safety matters, it does not require a declaration in relation to the sustainability of food. However, this does not prevent food businesses from voluntarily promoting the sustainability, production methods or origin of seafood where the Code is silent.²³

Australian Fish Names Standard

2.26 As the Code does not define names for fish, the seafood industry worked with Standards Australia to develop an Australian Fish Names Standard (AFNS). The AFNS (AS SSA 5300) is a voluntary standard which provides guidance on standard fish names to be used in Australia. The Code refers to the AFNS but it does not mandate compliance with the standard.²⁴

2.27 Introduced in 2007, the AFNS requires retailers to display the Approved Fish Names logo and label seafood with the Australian approved fish name.²⁵ According to the Australian Fisheries Research Development Corporation (FRDC), the AFNS draws extensively from international references derived from the United Nations Food and Agriculture Organisation (FAO) guidance for fish species to identify fish species and names for application in Australia.²⁶

2.28 The AFNS is the subject of further consideration in Chapter 4.

21 Department of Health, *Submission 22*, p. [2].

22 Department of Health, *Submission 22*, p. [3].

23 NSW Food Authority, *Submission 19*, pp 2–3.

24 Department of Agriculture, *Submission 11*, p. 5.

25 Australian Fisheries Research and Development Corporation, *Submission 17*, p. 6.

26 Australian Fisheries Research and Development Corporation, *Submission 17*, p. 6.