



AUSTRALIAN
FOOD AND GROCERY
COUNCIL

SUBMISSION

SUBMISSION TO

Standing Committee on Rural and Regional Affairs
and Transport

IN RESPONSE TO

Inquiry into Meat Marketing

17 March 2009

PREFACE

The Australian Food and Grocery Council is the peak national organisation representing Australia's food, drink and grocery manufacturing industry.

The membership of the AFGC comprises more than 150 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. (A list of members is included as Appendix A.) The AFGC represents the nation's largest manufacturing sector. By any measure our members are substantial contributors to the economic and social welfare of all Australians. Effectively, the products of AFGC's member companies reach every Australian household.

The industry has annual sales and service income in excess of \$70 billion and employs more than 200 000 people – almost one in five of the nation's manufacturing workforce. Of all Australians working in the industry, half are based in rural and regional Australia, and the food manufacturing sector sources more than 90 per cent of its ingredients from Australian agriculture.

The AFGC's agenda for business growth centres on public and industry policy for a socioeconomic environment conducive to international competitiveness, investment, innovation, employment growth and profitability.

The AFGC's mandate in representing member companies is to ensure a cohesive and credible voice for the industry, to advance policies and manage issues relevant to the industry enabling member companies to grow their businesses in a socially responsible manner.

The Council advocates business matters, public policy and consumer-related issues on behalf of a dynamic and rapidly changing industry operating in an increasing globalised economy. As global economic and trade developments continue to test the competitiveness of Australian industry, transnational businesses are under increasing pressure to justify Australia as a strategic location for corporate production, irrespective of whether they are Australian or foreign owned. In an increasingly globalised economy, the ability of companies to internationalise their operations is as significant as their ability to trade globally.

Increased trade, rationalisation and consolidation of businesses, increased concentration of ownership among both manufacturers and retailers, intensified competition and dynamic, increasingly complex and demanding consumers are features of the industry across the globe. Moreover, the growing global middle class of consumers is more sophisticated and discerning, driving innovation and differentiation of products and services.

The AFGC is working with governments in taking a proactive approach to public policy to enable businesses to tackle the threats and grasp the dual opportunities of globalisation and changing consumer demands.

Statement to the Senate Meat Inquiry

1. Forms of Regulation

Regulatory measures range across a spectrum from industry voluntary self-regulation, or industry codes, with no legal compulsion on industry members to comply, through to full black-letter law where compliance is mandatory. There are intermediate co-regulatory options which may be supported by enforcement agencies and/or legislation viz

- 1) Independent voluntary industry codes;
- 2) Codes endorsed or authorised by a regulatory authority; and
- 3) Full regulation (black letter law) set mandatory requirements.

Self or co-regulation is the imposition by an industry upon itself of a code of practice, conduct or guidelines prescribing additional business performance standards beyond black-letter law for the industry in particular areas. Such codes are also referred to as *quasi-regulation*, particularly if they are supported by legislation.

The Australian Consumer and Competition Commission (ACCC) considers¹ that self regulation can provide a cost-effective means of addressing market failure in an industry basis through:

- being flexible and sensitive to market circumstances;
- providing ownership to industry members over the regulation of their industry;
- setting benchmarks for best practice in the industry; and
- including rapid dispute resolution mechanisms to resolve issues between industry members or raised by members of the public.

Notwithstanding this, the ACCC prefers co-regulation where self-regulation is supported through the provision of advice and endorsement by the ACCC, or another enforcement agency, of an effective industry code and a framework to monitor ongoing compliance with the code. This ensures that all stakeholders are the beneficiaries of an effective industry code.

For industry codes to be successful they must address a number of issues *viz*:

1. **Address market failure.** Codes must describe clearly the reasons (i.e. the market failure) for their establishment and the intended outcomes to effectively address stakeholder concerns.
2. **Consultation.** If codes of conduct/self-regulation are to be accepted by governments and have credibility with stakeholders, consultation with the appropriate stakeholder/community/user groups is vital.
3. **Clarity.** For all stakeholders to accept a code, it must be legally accurate and easy to understand.
4. **Code administration.** A code administration body needs to be established and its existence and operations written into the code document so that it becomes part of the overall code. The administration will require an adequate budget.
5. **Transparency.** Codes aimed at delivering fair trading outcomes need stakeholder representation on an administration committee including in complaints handling.
6. **Coverage.** The effectiveness of codes depends on coverage of the industry. Legislation may be required to ensure industry-wide coverage if it cannot be achieved voluntarily.
7. **Effective complaints handling.** The code should include mechanisms to resolve complaints including through independent arbitration and independent review.

¹ G.Samuels. ACCC. Centre for Public Affairs 2003 Oration. Nov. 2003

8. **In-house compliance.** Each member should be able to demonstrate how they ensure compliance with the code.
9. **Sanctions for non-compliance.** For the credibility of a code, commercially significant sanctions are necessary.
10. **Communication.** Codes are of real benefit when all members and stakeholders are made aware of them.
11. **Reporting and Monitoring.** Data collection is important for reporting compliance and non-compliance and to identify recurring problems which need addressing by industry members. It also provides accountability through allowing for periodic assessment of effectiveness.
12. **Review.** The code should provide for regular reviews to ensure that the standards incorporated are meeting identified objectives and performance indicators.

Successful industry codes must be well designed, effectively implemented and properly enforced. Strong industry associations are required for setting up and running such codes. The associations provide leadership through initially identifying and describing the market failure and consulting all interested stakeholders, and subsequently providing the resources for developing the details of the code and financing its administration.

2. Enforcement of Industry Codes

The credibility of a regulatory measure (i.e. a code) depends on a high level of compliance which, in turn, is dependent upon:

- a high level of awareness and understanding of the requirements of the code;
- acceptance by those regulated of the value of the market failure being addressed by the Code – that is industry members themselves must see advantage in the complying with the Code; and
- effective enforcement and monitoring of compliance and meaningful sanctions for non-compliance.

The latter is particularly important when inducements for non-compliance with the code are substantial i.e. when non-compliance might provide a business with a market advantage.

The key elements of successful enforcement of a code therefore comprise:

- clear communication of the reasons for the code and its requirements to all stakeholders;
- regular monitoring and reporting of the compliance;
- timely, independent complaint resolution processes (including appeal processes); and
- meaningful sanctions providing a strong disincentive to transgressing the code.

In the case of industry codes possible sanctions include:

- reporting of the non-compliance into the public domain;
- expulsion from the industry association administering the code; and
- financial penalties.

It may only be possible, however, to impose financial penalties in cases where the industry code is supported by a legislation - that is when the code is a formal co-regulatory measure.

3. Legislative support of Industry Codes

Industry codes have the advantage over black-letter law of being more flexible, more responsive and providing greater “ownership” to the industry which developed it. It has the disadvantage, however, of being more difficult to enforce through the imposition of meaningful sanctions. To address this short-coming of voluntary codes, the concept of co-regulation which is supported by legislation has been developed. Such codes remain voluntary as their provisions are voluntarily developed by the Industry (although stakeholders necessarily have input into the provisions) to address an agreed market failure, but compliance is compulsory through provision of legislation support. That is, an enforcement agency might refer to the code in legislation and require compliance with its provisions. Non-compliance with the code thus becomes an offence.

Legislative support can be critical to ensuring complete coverage of a Code across an industry. Voluntary codes may not receive the full support of industry, particularly when there are many hundreds or even thousands of companies involved.

Example of a voluntary Industry Code

AFGC Daily Intake Guide Labelling Scheme. In November 2006 the AFGC launched the Daily Intake Guide Labelling Scheme. This provides an industry standard for front-of-pack labelling to provide nutritional information to consumers regarding the nutrient content of package food and the contribution it makes to the average adult diet.

The scheme was introduced in response to growing concerns regarding the levels of obesity in the community. There are now well over 1000 food products on the shelves using the scheme, with all mainstream food products being represented.

Having demonstrated its value in the market place with high levels of consumer acceptance, the AFGC is currently updating the scheme and will be providing more resources for its promotion to the industry. Increased resources will also be devoted to compliance to ensure it is used appropriately by food companies.

Examples of Legislative support of Industry Codes

The ACCC. The primary role of the ACCC² in relation to industry codes of conduct is to promote compliance with prescribed industry codes of conduct under the *Trade Practices Act (the Act)*.

Industry codes of conduct may be prescribed under the Act as either:

- prescribed mandatory industry codes of conduct – that is, they are binding on all industry participants. Currently these are the *Franchising Code*, the *Oilcode* and *The Horticulture Code*; and
- prescribed voluntary industry codes of conduct - that is they are binding only on signatories to the code.

The ACCC can also assist industry to develop and administer their own effective non-prescribed voluntary industry codes of conduct.

Occupational Health and Safety Code of Practice 2007³ - The Commonwealth Occupational Health and Safety legislative framework comprises a Commonwealth Act with supporting regulations and Code of Practice. The Act refers to the Code of Practice which is considered a source of expert practical guidance on safe work practices. The code, which is highly detailed in the guidance it provides, does not impose mandatory legal obligations, but it is admissible as legal evidence of what is reasonably practical for a duty holder to do to comply with a related provision of the Act or regulations.

² www.accc.gov.au

³ www.comcare.gov.au

*Therapeutic Goods*⁴. In Australia advertising of therapeutic goods is subject to a number of codes of practice which enjoy a range of legislative support. The *Therapeutic Goods Advertising Code* is referenced in a schedule in a Commonwealth Act; the *Australian Self Medication Code of Practice* is an authorised code of the Trade Practices Commission (now the ACCC); and in the case of the *Complementary Healthcare Council of Australia Code of Practice for the Marketing of Complementary Healthcare and Healthfood Products* the code is essentially stand alone although for sanctions, cases of non-compliance can be referred to appropriate regulatory agencies.

4. Financial considerations

The development, implementation and administrative support of an industry code of practice require appropriate resources for its credibility with stakeholders, and to ensure high levels of compliance. Initial development of codes is labour intensive requiring a dedicated team to prepare drafts of the code and to consult with stakeholders. Upon implementation of the code funding will be required, *inter alia*, for:

- a Secretariat function for the running of the Code;
- communicating the provisions of the code to industry members and other stakeholders;
- supporting an administration committee which may include sitting fees and travel and accommodation costs;
- convening a complaints resolution committee which may include sitting fees and travel and accommodation costs;
- commissioning audits of compliance with the provisions of the code;
- reviewing the utility of the code and subsequently drafting amendments to the code, with stakeholder consultation; and
- reporting to stakeholders the operation of the code and its effectiveness.

The main beneficiaries of an industry code of practice must provide most of the funding for its operation as there is limited argument for cost offset to government agencies.

5. Conclusions

There are many ways in which industries can collectively chose to adopt particular standards of governing their activities. Codes, guidelines, industry standards are all examples of industries deciding substantial benefit will flow from adherence to agree ways of 'doing things'. Their success is however dependent upon high degrees of compliance, which in turn requires individual parties to perceive the value of complying, backed up by effective enforcement of the Code. This requires a strong industry association prepared to devote resources to promoting the Code to its members, coupled with an effective compliance program which includes complaints resolution and the capacity to impose meaningful sanctions.

⁴ www.tga.gov.au

AFGC MEMBERS AS AT 1 FEBRUARY 2009

Arnott's Biscuits Limited	Johnson & Johnson Pacific Pty Ltd	Swift Australia Pty Ltd
Snack Foods Limited	Pfizer Consumer Health	Symrise Pty Ltd
The Kettle Chip Company Pty Ltd	Kellogg (Australia) Pty Ltd	Tate & Lyle ANZ
Asia-Pacific Blending Corporation Pty Ltd	Day Dawn Pty Ltd	The Smith's Snackfood Co.
Barilla Australia Pty Ltd	Specialty Cereals Pty Ltd	The Wrigley Company
Beak & Johnston Pty Ltd	Kikkoman	Unilever Australasia
BOC Gases Australia Limited	Kimberly-Clark Australia Pty Ltd	Wyeth Australia Pty Ltd
Bronte Industries Pty Ltd	Kerry Ingredients Australia Pty Ltd	Yakult Australia Pty Ltd
Bulla Dairy Foods	Kraft Foods Asia Pacific	
Bundaberg Brewed Drinks Pty Ltd	Lion Nathan Limited	Associate Members
Bundaberg Sugar Limited	Madura Tea Estates	Accenture
Cadbury Schweppes Asia Pacific	Manildra Harwood Sugars	Australia Pork Limited
Campbell's Soup Australia	Mars Australia	ACI Operations Pty Ltd
Cantarella Bros Pty Ltd	Mars Food	Amcor Fibre Packaging
Cerebos (Australia) Limited	Mars Petcare	CHEP Asia-Pacific
Christie Tea Pty Ltd	Mars Snackfood	Concurrent Activities
Clorox Australia Pty Ltd	McCain Foods (Aust) Pty Ltd	Dairy Australia
Coca-Cola Amatil (Aust) Limited	McCormick Foods Aust. Pty Ltd	Exel (Aust) Logistics Pty Ltd
SPC Ardmona Operations Limited	Merino Pty Ltd	Focus Information Logistics Pty Ltd
Coca-Cola South Pacific Pty Ltd	Merisant Manufacturing Aust. Pty Ltd	Food Liaison Pty Ltd
Colgate-Palmolive Pty Ltd	National Foods Limited	FoodLegal
Coopers Brewery Limited	Nerada Tea Pty Ltd	Food Science Australia
Dairy Farmers Group	Nestlé Australia Limited	Foodbank Australia Limited
Danisco Australia Pty Ltd	Nestlé Foods & Beverages	IBM Business Cons Svcs
Devro Pty Ltd	Nestlé Confectionery	innovations & solutions
DSM Food Specialties Australia Pty Ltd	Nestlé Ice Cream	KPMG
DSM Nutritional Products	Nestlé Nutrition	Legal Finesse
Earlee Products	Foodservice & Industrial Division	Linfox Australia Pty Ltd
Ferrero Australia	Novartis Consumer Health Australasia	Meat and Livestock Australia Limited
Fibrisol Services Australia Pty Ltd	Nutricia Australia Pty Ltd	Monsanto Australia Limited
Fonterra Brands (Australia) Pty Ltd	Ocean Spray International Inc	Promax Applications Group Pty Ltd
Foster's Group Limited	Parmalat Australia Limited	Sue Akeroyd & Associates
Frucor Beverages (Australia)	Patties Foods Pty Ltd	Swisslog Australia Pty Ltd
General Mills Australia Pty Ltd	Peanut Company of Aust. Limited	The Nielsen Company
George Weston Foods Limited	Procter & Gamble Australia Pty Ltd	Touchstone Cons. Australia Pty Ltd
AB Food and Beverages Australia	Gillette Australia	Visy Pak
AB Mauri	PZ Cussons Australia Pty Ltd	Wiley & Co Pty Ltd
Cereform/Serrol	Queen Fine Foods Pty Ltd	
Don	Reckitt Benckiser (Aust) Pty Ltd	PSF Members
GWF Baking Division	Ridley Corporation Limited	Amcor Fibre Packaging
George Weston Technologies	Cheetham Salt Limited	Bundaberg Brewed Drinks Pty Ltd
Jasol	Sanitarium Health Food Company	Cadbury Schweppes Asia Pacific
Weston Cereal Industries	Sara Lee Australia	Coca-Cola Amatil (Aust) Limited
GlaxoSmithKline Consumer Healthcare	Sara Lee Foodservice	Foster's Group Limited
Golden Circle Limited	Sara Lee Food and Beverage	Golden Circle Limited
Goodman Fielder Limited	SCA Hygiene Australasia	Lion Nathan Limited
Meadow Lea Australia	Sensient Technologies	Owens Illinois
Quality Bakers Aust Pty Ltd	Simplot Australia Pty Ltd	Visy Pak
H J Heinz Company Australia Limited	Spicemasters of Australia Pty Ltd	
Hans Continental Smallgoods Pty Ltd	Stuart Alexander & Co Pty Ltd	
Harvest FreshCuts Pty Ltd	Sugar Australia Pty Ltd	
Hoyt Food Manufacturing Industries Pty Ltd	SunRice	

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