

AUSTRALIAN
**FOOD &
GROCERY**
COUNCIL

AFGC SUBMISSION

NATIONAL MEASUREMENT INSTITUTE:
REVIEW OF LEGAL METROLOGY

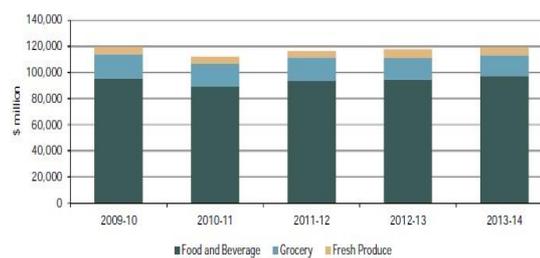
Sustaining Australia

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 190 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.

Figure 3.1: Composition of the defined industry's turnover (\$2013-14)¹¹



Source: Based on ABS, catalogue number 8221.0, 8159.0 and 8155.0

Australia's food and grocery manufacturing industry takes raw materials and farm products and turns them into foods and other products that every Australian uses every day. With an annual turnover in the 2013-14 financial year of \$118 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. It adds over \$32 billion to the value of the products it transforms.

Manufacturing of food, beverages and groceries in the fast moving consumer goods sector is Australia's largest manufacturing industry. The diverse and sustainable industry is made up of over 26,651 businesses and represents 30% (almost one third) of the total manufacturing industry in Australia.

The food and grocery sector accounts for over \$61.7 billion of the nation's international trade in 2014-15, with a trade surplus worth over \$10 billion to the Australian economy in 2014-15. These businesses range from some of the largest globally significant multinational companies to family-based small and medium enterprises.

The food and grocery manufacturing sector employs more than 322,900 Australians, paying around \$16.1 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 over 40% 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.

The contribution of the food and grocery sector to the economic and social well-being of Australia cannot be overstated. Australians and our political leaders overwhelmingly want a local, value-adding food and grocery manufacturing sector.

Data source: AFGC and EY State of the Industry 2015: Essential Information: Facts and Figures

AFGC SUBMISSION

The AFGC provides this submission in response to the National Measurement Institute (NMI) August 2016 Discussion Paper, “*Legal Metrology Policy Review*”.

The AFGC considers that consumers, governments and the community generally has confidence in trade and legal measurement so far as this is the responsibility of the NMI. However, current regulations do not provide a level playing field for business, especially in relation to products imported from the EU, and this is an issue that is detrimental to consumers and to industry. The AFGC does not consider that metrology regulation has kept pace with current consumer protection policies or practices, and that current metrology regulation impedes rather than supports technological development and innovation.

That said, the AFGC considers the benefit of government regulation of metrology to remain a key consumer protection initiative to ensure that consumers are informed about the measurement of goods provided in a transaction and have confidence that the delivery of those goods aligns with declared measures. The AFGC does not believe that legal metrology should be abandoned: rather that it needs to be better aligned and proportionate with other consumer protection measures to ensure that business impacts are minimised and especially that Australian consumers are not disadvantaged in the global marketplace.

In substance, the AFGC submissions come down to a limited number of issues:

- Regulatory Reform in particular of the labelling obligations for pre-packaged goods
- Small enterprise education as the use of, and implications of using, the ‘e’ symbol
- Transitional measures necessary pending reform.

REGULATORY REFORM

National trade measurement regulation is highly prescriptive as to the location, size, content and presentation of weight or volume markings on packaged goods for retail sale. Such markings are required to be “front of pack, in a minimum type size, in metric measures of no more than 3 significant figures, separated from any edge, other text or graphic by at least 2mm, in colour contrast to the background and oriented in the same direction as the major brand marking. There are no less than 16 requirements applicable to metrology statements, when most other product regulation has just four.

This is of concern because imported products, especially from the EU, often do not comply with Australia’s highly prescriptive regulatory requirements, meaning they need to be relabelled with front of pack stickers, or to have Australia-specific packaging prepared, both of which are unnecessarily expensive solutions for what, in global terms, is a small fringe market. Even domestic products can be caught out by the high degree of prescription, as the legislation is somewhat obscure especially for SMEs.

The AFGC understands that Australia’s requirements can be said to be no more than those set out by international legal metrology standards. Such standards, though, have

not been developed in a contestable manner against established policy and consumer goals, and are out of line with modern approaches to minimum effective regulation. This is most clearly evidenced in the EU where products are labelled, in the NMI's previously expressed views, in contravention of international standards.

While the AFGC generally favours alignment of Australian and international standards, this is not an article of faith – it depends on whether the international standards properly reflect the goals of evidence-based, minimum effective regulation. It is never appropriate to use internal standards of dubious provenance (in terms of regulatory policy) as an umbrella to maintain a particular status quo.

The ongoing need for metrology pack markings has also been reduced since the introduction under consumer law of unit price marking. Although unit pricing is not universal, it is, in the AFGC's view, a better mechanism to allow consumers to compare the price – measurement value equation at point of sale than comparing two different pack measurements divided by two different prices. Again, the AFGC does not argue for the abolition of legal metrology requirements, but rather seeks to minimise the cost and market access issues posed by what the AFGC considers to be the current state of over-regulation.

Consider the following real life examples –

- A soft drink beverage sought to have a modern design by aligning its brand name vertically. It retained a front of pack volume marking placed horizontally along the lower portion of the can. Labelling stock had to be discarded when it was pointed out that the measurement statement was not oriented in the same direction as the branding, even though the marking was in other respects clear and prominent.
- A bottle of perfume in a presentation case imported from Europe contains a measurement marking on the rear of the package, as permitted under EU laws. On importation, the presentation package must be over-stickered with a front of pack volume marking, diminishing its prestige appearance.

Australia represents 1.2% of global trade in cosmetics. Of the \$10b industry, 96% is imported product of which approximately 60% originates in the EU, where rear label marking is permitted. The affected industry at the moment thus stands in the order of \$5.7billion.

Over-labelling of products, both primarily and secondarily, involves the double-handling of the product affecting the quality and retail image of the product (i.e. removal of cellophane, removal of jar from carton and application of sticker to front and back jar label, application of sticker to front and back of carton). In one example, 7300 units requiring local over-labelling affected the profit margin by a 9 per cent loss. Re-labelling is more expensive than original labelling – Accord Australasia estimates shipment relabelling costs range from \$25 000 to \$75 000 depending on the type/quality/extent of packaging involved. (Accord Australasia submission to the Productivity Commission study into chemicals and plastics regulation 2008). Total costs to the industry would likely be in the tens of millions of dollars.

High Australian regulatory costs encourage consumers to buy directly from overseas suppliers, bypassing the over-prescriptive trade measurement requirements. The 2013 DAE report in Australia's food and grocery regulation found that a \$100 million (in 2011-12 dollars) per annum reduction of regulatory burden on the food and grocery manufacturing sector is estimated to increase GDP by \$243 million to \$255 million and employment by around 214 FTEs to 231 FTEs.

The solution is to replace current overly prescriptive requirements with performance-based requirements similar to those in the EU that require the marking to be "*indelible, easily legible and visible ... in normal conditions of presentation*", or those in the Food Standards Code (prominent, legible and in colour contrast).

Specifically, the table below sets out current labelling obligations and highlights those which the AFGC considers are justified and should remain.

NTMR	Current Requirement	Proposed Requirement	Allergen Labelling
4.9(2)(a)	Clear		
4.9(2)(b)	Conspicuous		
4.9(2)(c)	Readily seen and easily read when the product is exposed for sale in the manner in which it is supposed to be exposed for sale.	Prominent Legible	Prominent Legible
4.10	Positioned in principal display panel(s)		
4.11(1)(a)	Close to any name or brand		
4.11(1)(b)	Read in the same direction as name or brand		
4.11(1)(c)	2mm space to any pack edge		
4.11(1)(d)	Separated by 2mm from any other graphic matter or copy		
4.11(1)(e)	Metric units	Metric Units	English
4.11(2)	Decimal sub-multiples to be preceded by a zero		
4.11(3)	Front 1/3 rd of cylindrical packages		
4.12(1)(a)	Clear characters		
4.12(1)(b)	Applied by an approved printing device (unless handwritten, stamped or embossed)		
4.12(2)	Colour contrast	Colour contrast	Colour contrast
4.12(3)	4-scale minimum size based on maximum dimension of package		
4.14	Decimal submultiples of no more than 3 significant figures		

In other words, 16 current requirements can be replaced by four with no consumer detriment (based on that fact that the same four labelling obligations apply under food law,

even to immediate safety issues like allergen labelling, without objection or call for reform) and at the same time removing a significant non-tariff trade barrier.

SME EDUCATION

As noted above, the proliferation of detailed labelling requirements can pose a particular burden on SMEs who may be simply unaware of the need to comply with such detailed and non-intuitive regulation, leading to inadvertent contravention

A further issue relates to the use of the 'e' mark, used in the EU and internationally to signify compliance with the European Union Directive 26/211/EEC, but prescribed in Australian regulation as a signifier of the use of the Average Quantity System (AQS) for measurement marking. This represents something of an appropriation by Australian regulators of the mark, but it is not too much of a stretch given the EU Directive implements the AQS system.

The issue of concern is that SMEs often take a major brand label as a guide to labelling requirements without necessarily having the expertise or resources to ensure independent compliance. This may lead to some SMEs using an 'e' mark in conjunction with their product's measurement marking in the mistaken belief that all measurement marks are supposed to carry an 'e' marking, unaware that by doing so they are signifying compliance with AQS rather than the alternative nil average deficiency requirements. Unless the labeller has some expertise and knowledge of legal metrology, there is no obvious connection between the 'e' symbol and the AQS.

As SMEs are unlikely to have addressed the intricacies of AQS, if indeed AQS has any application to a small production batch, again the regulations can lead to inadvertent contravention unless a strong educational campaign is conducted as part of the NMI enforcement program in relation to pre-packed goods. Regulations that give rise to inadvertent contravention should be reviewed to improve clarity as to the obligations they impose.

The AFGC commends the NMI for its modern approach to enforcement and has no recent example of the sort of measures such as that cited above where a perfectly legible, albeit wrongly orientated, marking was the cause of significant cost to the company involved. It is important that NMI officers continue with a 'compliance' as distinct from 'enforcement' mindset in such cases and see themselves as having a significant educational role as part of their duties.

TRANSITIONAL MEASURES

The AFGC has previously worked with the NMI and the Department of Industry , Innovation and Science in relation to the reform of metrology marking regulation, and in particular the reduction in labelling requirements from sixteen to four. It is not clear how this policy review relates to that more specific reform, but the AFGC fears that specific labelling reform may stall pending this Review, or be subsumed by it.

Any delay is of particular concern as the NMI has provide some companies with a 'grace period' in relation to products imported from the EU where rear-labelled (and EU

compliant) product in particular could be imported and sold in Australia without the necessity to re-sticker an additional measurement marking to the package front. These 'grace period' letters foreshadowed the intended reforms. However, the grace period was not indefinite, and many are now close to expiry with no labelling reform currently in sight.

The AFGC welcomes a broader policy review of legal metrology, but not at the cost of any significant delay to the labelling reform and not if it creates a gap between the end of 'grace periods' and the introduction of measures that would allow such imports on a more permanent basis.

The AFGC sees some benefit in labelling reform being part of this wider Policy Review, where labelling requirements can be tested against current Government policy development requirements. It may be that such testing results in more widespread and fundamental reform to metrology marking requirements. However, the immediate issue to ensure that company's trade is not adversely impacted, and to this end the NMI should make it clear in the more immediate timeframe how it intends to extend the 'grace periods' until actual reform can be delivered.

CONCLUSIONS

The AFGC considers that –

- (a) regulatory reform remains an issue of paramount concern, and in particular the revision of the over-complicated labelling regime for pre-packed goods is essential;
 - (b) existing NMI regulation can lead to inadvertent contravention and this should be considered as part of the NMI enforcement protocols; and
 - (c) the NMI needs to give immediate and urgent attention to a means to extend existing 'grace periods' for the importation from the EU of products complying with EU regulation (including those with rear label markings).
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