

9 June 2015

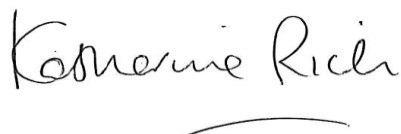
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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the ***Consultation Paper – May 2015: Bi-National Food Labelling Compliance and Enforcement Framework***.

Yours sincerely



Katherine Rich
Chief Executive

**Food Regulation Standing Committee/Implementation
Sub-Committee for Food Regulation**

**CONSULTATION PAPER – MAY 2015: BI-NATIONAL FOOD
LABELLING COMPLIANCE AND ENFORCEMENT FRAMEWORK**

9 June 2015

The New Zealand Food & Grocery Council (the “NZFGC”) welcomes the opportunity to make a submission on the *Consultation Paper – May 2015: Bi-National Food Labelling Compliance and Enforcement Framework*.

New Zealand Food & Grocery Council

NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$28 billion in export revenue from exports to 185 countries – some 61% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 46% of total manufacturing income and 34% of all manufacturing salaries and wages. Our members directly or indirectly employ 370,000 people – one in five of the New Zealand workforce.

Comments

The Food Labelling Compliance and Enforcement Framework comprises:

- the Food Labelling Compliance and Enforcement Strategy
- a suite of food labelling enforcement actions
- guidance for food regulators about best practice compliance, monitoring and enforcement. (p1 Draft Binational Food Labelling Compliance and Enforcement Strategy 2015).

NZFGC considers the framework should include a fourth element:

- a strategy and suite of actions to generate and encourage consistent industry compliance.

We suggest this to address the ANAO Best Practice Guide principle concerning “Educating regulated entities about the regulatory regime”. We also suggest it because the discussion paper states (section 5.2.1) that all food regulators place significant investment “upfront” in generating industry compliance through jurisdictional initiatives and bi-national, co-ordinated approaches. Yet there is no documented strategy or list of such investment that directly involves industry. The statement is repeated in section 6 (section 6.2) but the only action referred to is the bi-national, agreed guideline for enforcement. Enforcement is the last step in the system – the ‘ambulance at the bottom of the cliff’ so to speak. A strategy and suite of actions that generate compliance are ‘top of the cliff’ measures that could well obviate the need for recourse to compliance and enforcement to the extent currently applied.

While the basis of the approach to the bi-national labelling and compliance strategy is consistent with the ANAO *Better Practice Guide to Administering Regulation*, in practice, sharing the education load and the encouragement to comply could result in greater

consistency and compliance by industry and require less compliance and enforcement action.

A key performance indicator for any regulatory system is the level of compliance it achieves. A system that reflects a low level of compliance also reflects serious problems with any of the following:

- poor regulatory requirements (unclear, confusing, lacking, excessive, contradictory, illogical etc)
- poor support for applying law (few or no guides, no explanatory information etc)
- poor understanding (low education in users)
- willingness to flout the law
- poor enforcement.

NZFGC is not suggesting that compliance is low in the Australia and New Zealand food industry but rather that there is a gap in the compliance and enforcement Framework. The Framework currently addresses the last two points. The Code Revision exercise and prospective efforts by FSANZ to consider further areas of confusion in the Code addresses the first point about regulatory requirements. NZFGC believes a focus on the strategy and actions that address specifically the second point is vital to a healthy compliance regime. This would also underpin the efforts for “generating compliance” and obviate the need, in part, for compliance and enforcement action. Actions that effectively support compliance, that address educational levels and, at a higher level, address information and support gaps in the system could well result in less need for enforcement action.

Specific Comments on Attachment 1

The introduction is very lengthy. The justification for the Strategy is better suited to covering papers and the first four paragraphs could be deleted. The table is a very informative graphic and warrants a position up front.

The scope of the framework and strategy is not clearly articulated. The reader is advised it is broad and the reasons why are listed. The table is illustrative rather than comprehensive. Both the list and the table could be included in an Annex and a simple statement made on scope such as:

“The scope of the Framework and this Strategy covers aspects of the food labelling hierarchy (food safety, preventative health and consumer values), the model food provisions, packaged and some unpackaged food, all food industry sectors (primary production, manufacturing, retailing and food service), imported foods and voluntary and mandatory labelling provisions.”

There is not a clear separation between the Strategy, the Framework and the Enforcement Guideline because the Strategy refers, at section 1.2, to the “Purpose of the Food Labelling Compliance and Enforcement Framework” but after one sentence lists the objectives of the Enforcement Guideline and the principles the Guideline contains.

The purpose of the Framework would be better contained in a Framework document so that the ‘Purpose of the Strategy’ is reached first. While the objectives in the Enforcement Guideline might have close relevance for the Strategy, they are justifiably narrower. The Strategy should contain overarching objectives and principles such that the Enforcement Guideline objectives and principles fit neatly within or fall out of them in a cascade approach. For example, the objective to promote “A consistent approach to the application of enforcement provisions by food regulators” is too narrow for the Strategy which should refer to an objective that promotes: “A consistent approach to the application of compliance measures and enforcement provisions

by food regulators”. Several other objectives and principles would need amendment to broaden their application and objectives and principles around monitoring should be considered.

Section 2 ‘Purpose of the Strategy’, repeats many of the objectives and principles covered in section 1.2. Such duplication could be avoided by setting out the Strategy’s objectives and principles as discussed above. Reflecting a substantial portion of the ANAO *Better Practice Guide* in relation to a risk-based approach to regulatory administration would be better placed in an Annex since it is presumably to add credence to the Strategy and evidence of consistency with other government guidance in the area. If there are matters of equal importance to the Strategy in the *Better Practice Guide* that are not contained in the latter part of this section (such as reference to the elimination of risk) then these could be added at the end of the section.

Section 3.5 contains the list of ‘Coordinated approaches across jurisdictions to achieve consistent compliance, monitoring and enforcement’. The only ones that directly involve industry in any collaborative sense are the *Integrated Model for Standards Development* which is not bi-national as it is limited to primary production implementation (and according to the Food Regulation Secretariat website, has been applied only to poultry and eggs) and the one line reference to ‘other initiatives’. This highlights the need for an element in the Framework that is a strategy and suite of actions to generate and encourage consistent industry compliance.

Responses to Questions

Question 1: Does the Framework facilitate a timely, risk-based, proportionate and graduated approach to food labelling compliance and monitoring activities and enforcement actions by food regulators? If not, why?

NZFGC Response: As noted in the foregoing, the Framework goes part way to facilitating a risk-based, proportionate and graduated approach to food labelling compliance and monitoring activities and enforcement actions by food regulators. It does not fully address the element “generating compliance” or describe the measures that might be taken to encourage compliance before compliance and enforcement action is necessitated.

Question 2: Does the Framework facilitate improved clarity and transparency about how food regulators administer food labelling regulations? If not, why?

NZFGC Response: In part, yes. Greater focus on measures to encourage compliance would enhance the administration of the system.

Question 3: Is the Framework consistent with the principles of Best Practice as set out in current best practice documents - Australian Government Guide to Regulation and the Australian National Audit Office (ANAO) Administering Regulation Better Practice Guide, June 2014? If not, why?

NZFGC Response: In part yes. What appears to be missing are some of the elements that would contribute to the third principle listed by the ANAO titled “Educating regulated entities about the regulatory regime” (p7 ANAO *Best Practice Guide*). This suggests that regulated entities need to be aware of and understand their compliance obligations, and have the ability to readily access information about them. This requires regulators to effectively communicate to regulated entities their compliance obligations and their rights as a participant in a regulatory regime.

Question 4: Does the Strategy clearly explain risk in the context of food labelling? If not, why?

NZFGC Response: Yes.

Question 5: Does the suite of enforcement actions give food regulators flexible, timely and cost effective options for addressing food labelling non-compliance? If not, why?

NZFGC Response: Yes. The effectiveness of these in a risk-based environment is the extent to which regulators select the most appropriate enforcement action and the escalation pathway followed in the process.

Question 6: Does the *Administering Regulation Better Practice Guide*, Australian National Audit Office, June 2014 provide effective, clear and transparent guidance to food regulators about administering food labelling regulation? If not, why?

NZFGC Response: Yes.