

# Overview of Australian Food Compliance Laws

## - Part 1

*Readers please note:*

*This document is provided for information purposes only. The regulatory compliance information is provided as a guide only. You must not rely on any such information for commercial decision-making.*

*If you require compliance advice, please contact the firm FoodLegal to speak with either Joe Lederman or one of our other principal legal consultants.*

## About the Australia New Zealand Food Standards Code

The Australian system of food regulation includes a mandatory code known as the Australia New Zealand Food Standards Code (otherwise known as ‘the Food Standards Code’ or ‘Joint Food Standards Code’). The Food Standards Code is enforceable as law by legislation within each State and Territory and thereby covers all foods sold in the Australian domestic market. The Food Standards Code is also Federally enforced throughout Australia in relation to imports so that non-compliant products are potentially liable to be blocked from entry into Australia by the Australian Quarantine and Inspection Service (AQIS).

The current version of the Joint Australia New Zealand Food Standards Code came into effect on 20 December 2002 after a two year transition period where food businesses also had the choice of complying with an earlier version. Even though the Joint Food Standards Code became the uniform Code governing both Australia and New Zealand, some food standards have been excluded from operation in New Zealand, and also some parts of some standards have been expressly excluded within some Australian States. This means that there is not total uniformity in the laws of all jurisdictions. As well, different jurisdictions have various additional laws governing particular foods or production systems, as well as differing interpretations of standards and different policies of enforcement. Nevertheless, inter-government protocols exist that have the objective of eliminating or reducing these differences and there are several legal avenues for to reduce the risk of exposures of potential inconsistencies between them.

Different Federal, State and Territory representatives of health departments and other relevant government agencies or government departments, such as agriculture or primary industry, may have a say in the development of policies by

the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC). The ANZFRMC can set policy guidelines or directions for Food Standards Australia New Zealand (FSANZ). FSANZ has the task of developing or varying the food standards of the Joint Food Standards Code having regard to scientific principles and other policy considerations.

There are a number of consultative processes between governments and interested food policy implementation and stakeholders, food companies and others in food policy implementation and food standards development.

## **The structure of the Food Standards Code**

The Joint Food Standards Code contains a substantial proportion of Australia's prescriptive legal requirements for the composition, labelling, processing and safety of food.

The Joint Food Standards Code is divided into 4 chapters. The first two Chapters of the Code apply equally in Australia and New Zealand, while Chapters Three and Four apply only in Australia.

Chapter One and Chapter Two were first gazetted on 20 December 2000 (to take effect by 20 December 2002).

Chapter One ('General Food Standards') of the Food Standards Code prescribes generic standards applicable to all foods. These include labelling requirements for packaged foods and detailed requirements for ingredients listings and nutritional information in prescribed formats that vary according to various prescribed circumstances. The Australian labelling format is quite different from the format and content of American and British and European labels.

Chapter Two ('Food Product Standards') outlines additional prescriptive standards that are applicable to various food categories.

Chapter Three ('Food Safety Standards') was gazetted in August 2000 (being effective from 24 February 2001- although there were some variations in this time-frame). Chapter Three ('Food Safety Standards') contains requirements for food safety programs to be implemented by certain types of food business or Standard 3.2.1 Food Safety Programs was not applied until such time as the States and Territories adopted classifications of different businesses according to food safety risk. Standard 3.2.2 (Division 2: (3) Skills and Knowledge and (4) Notification) came into effect on 24 February 2002.

Chapter 4 ('Primary Production Standards'), contains primary food production standards for different agriculture commodities such as Standard 4.1.1 for wine production. The first of these standards was introduced in January 2003

## **Voluntary Industry Standards and Codes of Practice**

Apart from and in addition to the regulatory food standards set out in the Joint Food Standards Code (which have the force of law, see for example Section 16 of the Food Act (Victoria) or Section 21 of the Food Act (New South Wales)), there are voluntary industry standards and voluntary codes of practice which may be relevant to running a food business, and upon which FoodLegal can advise further. Some voluntary standards can nevertheless be tantamount to law if the enforcement agency (such as the ACCC) or a court uses an industry standard as a legal benchmark, for example in cases of alleged misrepresentation. Various international standards may also have important relevance in relation to international trade or quarantine biosecurity legal issues.

## **Contractual and Private Standards**

FoodLegal is also involved in relation to other non-mandatory standards relating to food in particular sectors. Some may operate either as voluntary industry compliance schemes or, in some instances, apply contractually in supplier-buyer relationships. FoodLegal advises on these 'private standards' that may address additional food compositional and hygiene specifications, traceability or transport requirements, or relate to such issues as the frequency of testing of product for contamination or residues.

## **FoodLegal can help you**

Legal disputes involving food companies are increasing because of more stringent enforcement of laws as well as the introduction of stricter compliance policies by food compliance enforcement agencies and supermarket major buyers.

For example, legal exposure risks are becoming more apparent in relation to new ingredients being added either for nutritional or health properties and/or for new technological functions, new processing aids, new caffeinated beverages, and new special-purpose foods.

New food safety regulations such as adoptions of new audit programs, accompanied by broader enforcement powers for government regulators, can create a potential trigger for additional legal action and the need for every food business to be prepared to defend or protect itself with appropriate compliance risk management practices and policies.

Supplier-buyer relationships or intellectual property infringements can also be problematic and can necessitate legal advice by FoodLegal.

Food recalls or applications for court orders present serious issues which FoodLegal can urgently address when requested. FoodLegal also can improve your compliance management systems when it is given an opportunity to assess and identify problem areas.

## **Benefits of FoodLegal services to improve your Compliance Systems**

Food companies that are non-compliant with any regulatory requirements are exposed to considerable legal liability risk and commercial risk. Ignorance does not constitute a legal defence.

Compliance obligations are not merely a cost burden but actually offer a food business the opportunity to combine regulatory compliance with improvement in quality assurance. Compliance will enhance asset protection because one of the main assets of a food business is its brand and reputation. Any failure in compliance management can have a potentially devastating impact on business reputation. In reality, better food quality systems and food-compliance systems usually also enhance profitability.

While food companies may need to resort to litigation to prevent improper enforcement action or to protect their business assets, every food business needs to consider its brand reputation and the need to protect the intellectual property and confidential data. FoodLegal advises and assists with compositional, marketing laws, IP and data protection, special documentation is usually advisable.