

# Current developments in food law and policy in Australia and internationally (April 2024)

By Joe Lederman and John Thisgaard (FoodLegal Co-Principals)

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## Australian Competition and Consumer Commission (ACCC) News:

### ACCC announces 2024-2025 Compliance and Enforcement Priorities

On **7 March 2024**, the Australian Competition and Consumer Commission (**ACCC**) announced its compliance and enforcement priorities for 2024-2025.

The ACCC has listed 10 priority areas. Amongst other areas, the ACCC will focus on:

Environmental claims and sustainability, including in relation to consumer concerns and product safety;

Competition, fair trading and pricing concerns in the supermarket sector;

Misleading or deceptive advertising online, including influencer marketing and online reviews (this follows a recent investigation into influencer marketing and online reviews); and

Consumer product safety for young children.

We discuss the impact of these priorities on food businesses in this April 2024 edition of FoodLegal Bulletin.

### Florist ordered to pay \$1 million for misleading representations

On **15 March 2024**, the Australian Federal Court ordered online florist Bloomex to pay \$1 million in penalties for breach of the Australian Consumer Law prohibition on misleading and deceptive conduct.

On its website, Bloomex published misleading ratings for its products between February 2019 and March 2023, based on a rating that was static since 2015. Moreover, Bloomex published false 'strikethrough' prices by stating '50% off' even though they had not sold the products at those higher prices.

According to the Court, the both the nature and duration of this conduct contributed to the penalty amount. Although this case did not concern a food business, it demonstrates that businesses should take care not to be misleading when publishing reviews and pricing online.

## **Other Australian regulatory news**

### **Investment company found to have made misleading environmental claims**

On **28 March 2024**, the Australian Federal Court found that Vanguard made misleading environmental claims in relation to its products.

Vanguard is a multinational investment company offering a range of products such as index funds. The Australian Securities and Investments Commission (**ASIC**) alleged that Vanguard made misleading representations in relation to its “Ethically Conscious Global Aggregate Bond Index Fund (Hedged)”, which was comprised of a number of securities on a specific Bloomberg index.

Fund providers occasionally use “exclusionary screens” to remove stocks from a portfolio that do not meet specific environmental or ethical criteria. ASIC alleged that Vanguard made representations that securities in the fund excluded businesses acting in certain industries (such as fossil fuels). However, Vanguard admitted a significant proportion of securities were in fact not researched or screened against the relevant criteria.

Whilst not a food-specific case, this case demonstrates that businesses should continue to examine environmental and sustainability claims and representations closely.

### **Australian Government responds to interim report on Food and Grocery Code of Conduct**

On **8 April 2024**, Dr Craig Emerson released an interim report on the Food and Grocery Code of Conduct. Dr Emerson was given this responsibility in 2023 as part of a political push to assess fairness of supermarkets’ conduct with suppliers.

The Food and Grocery Code of Conduct is a voluntary code prescribed under the *Competition and Consumer Act 2010* (Cth), however breaches do not incur penalties. The interim report recommends compliance with the code be mandatory for supermarkets with annual revenues exceeding \$5 billion, with breaches attracting penalties.

The interim report is open for comment until **30 April 2024**.

### **L-theanine now permitted in listed medicines**

On **1 March 2024** the Therapeutic Goods Administration (**TGA**) updated the list of permitted ingredients for use in listed medicines.

The list now includes L-theanine, which is permitted for exclusive use by Trans Chem Pty Ltd up to a maximum daily dose of 450 mg and can only be used as an active ingredient for export or in listed medicine.

### **New advertising code enforced in ABAC findings**

On **8 February 2024**, the Alcohol Beverages Advertising Code (**ABAC**) Adjudication Panel delivered a finding in relation to packaging by Garage Project (which owns the brands Pickle Beer, Spicy Pickle Beer and T-Sauce).

The packaging featured stylized cartoon imagery used to depict the fruit and vegetables in the product, as well as bright colours. The ABAC panel reviewed the packaging for all three products, but found that only one product (T-Sauce) had imagery with a “strong or evident appeal to minors” in contravention of the ABAC.

In making its finding, ABAC considered that the product was more likely to be confused with a tomato sauce or juice, as the name did not include the word “beer”. ABAC also considered that tomatoes and tomato sauce (unlike pickles) are more likely to appear to minors.

This case is one of the first assessed under the new version of the ABAC Code which commenced on 1 August 2023.

### **Australian government committee seeks submissions on Committee into Food and Beverage manufacturing**

On **18 March 2024**, the Australian House of Representatives Standing Committee on Industry, Science and Resources commenced its inquiry into Food and Beverage Manufacturing in Australia.

The inquiry will focus on innovation in the food and beverage manufacturing industry, with a specific focus on the following:

- New trends and technologies, particularly concerning premium and niche products
- Opportunities across both domestic and international markets for Australian manufactured products
- Developments in circular economy such as waste reduction and decarbonising.
- Workforce skill needs

The committee invites written submissions which close on **1 May 2024**. FoodLegal can provide assistance with written submissions.

### **DAFF releases draft review for beef from bovines born in Canada or Mexico and slaughtered in the United States**

On **20 March 2024**, the Australian Department of Agriculture, Fisheries and Forestry (**DAFF**) released a draft addendum to its 2017 review of fresh beef products from Japan, the Netherlands, United States and Vanuatu.

The addendum examines information on bovine diseases relevant to fresh beef and beef products derived from bovines that have been legally imported into the United States from Canada or Mexico.

The draft is open for public comment until **20 May 2024**.

## **TGA releases interim decisions on Poisons Standard amendments**

On **3 April 2024**, the TGA released interim decisions on proposed updates to the Standard for Uniform Scheduling of Medicines and Poisons (Poisons Standard). The updates relate to substances including benzoic acid, adrenaline and paracetamol.

Interim decisions have been referred to the Advisory Committee on Medicines Scheduling, and are open for comment until **17 April 2024**.

## **2. TGA fines Caruso's Natural Health Pty Ltd for alleged offences**

On **13 March 2024**, the TGA issued infringement notices totalling \$82,500 to Caruso's Natural Health Pty Ltd, alleging that it failed to hold information and evidence to support five therapeutic uses in relation to three medicines.

Under the TGA framework, suppliers can supply certain low risk-listed medicines without pre-market assessment by the TGA. However, if such products are supplied without pre-market assessment, then those suppliers must at all times hold information or evidence supporting each therapeutic use.

## **Food Standards Australia New Zealand (FSANZ) News:**

### **1. FSANZ commences assessment on *Moringa oleifera* application as a novel food**

On **2 April 2024** FSANZ completed its administrative assessment and accepted application A1294 - *Moringa oleifera* as a novel food. The application, made by Noosa Organica Pty Ltd, seeks to permit the sale of *Moringa oleifera* leaf (fresh and dried), immature (green) pods and seed oil as food.

### **2. FSANZ calls for comment on food derived from a genetically modified corn line**

On **18 March 2024** FSANZ issued a call for comment on application A1287 to permit the use and sale of food derived from the corn line MON94804. This corn line has been modified to have to reduced height to provide potentially higher yields.

Submissions close on **30 April 2024**.

### **3. FSANZ approves variations at Food Ministers Meeting**

On **13 March 2024** FSANZ approved variations arising from the following applications:

A1254: Rosemary extract as a food additive - extension of use;

A1273: Steviol glycosides as a food additive in Food for special medical purposes;

A1275: Transglutaminase from GM *Bacillus licheniformis* as a processing aid;

A1276: Food derived from herbicide-tolerant soybean line MON94313; and

A1277: 2'-FL from GM *Escherichia coli* K-12 (gene donor: *Helicobacter enhydrae*) in infant formula products.

FSANZ has notified these approvals to the Food Ministers' Meeting. The Food Ministers' meeting has 60 days to either request FSANZ to review its approval, or inform FSANZ that it does not intend to request a review.

#### 4. FSANZ call for comment on a processing aid

On **1 March 2024** FSANZ issued a call for comment on application A1284 to permit the use of Triacylglycerol lipase from the genetically modified strain of *Trichoderma reesei*. The Application seeks to permit the use of a new processing aid in the manufacture of bakery products and other cereal-based products.

Submissions close on **17 April 2024**.

#### 5. FSANZ announces withdrawn applications Application on low-THC hemp leaf is withdrawn

FSANZ has announced the withdrawal of the following Applications:

On **18 March 2024** FSANZ announced that Application A1236 to permit the sale of low-delta-9 tetrahydrocannabinol (THC) hemp leaf, seed sprout and root had been withdrawn by the applicant (Kavasil Pty Ltd). The application was initially made in 2021.

On **1 March 2024** FSANZ announced that Application A1263 to seek permission for *Rhodomonas salina* biomass and extract as a novel food had been withdrawn by the applicant (v2food Pty/Ltd).

### International food regulatory news

#### New Zealand

#### 5. Meat company fined for releasing contaminated smoke plume

On **9 February 2024**, Lean Meats Ltd was convicted of two charges under the *Resource Management Act 1991* (NZ) of discharging contaminants of smoke and animal processing water (wastewater) from a processing plant in 2022.

Judge John Hassan, of the Oamaru District Court, fined the company NZD \$51,500 for carelessly releasing a contaminated plume of smoke into the atmosphere. The incident occurred 500m from a childcare center at a time children were arriving.

The smoke came from an ad-hoc clean up exercise at a paddock close to the plant.

#### 7. NZ MPI amends import health standard for grain and seeds for consumption, feed or processing

On **11 March 2024**, The NZ Ministry for Primary Industries (**MPI**) amended the import health standard which sets requirements for grain and seeds for consumption, feed or processing. The change to the import health standard was to remove the phytosanitary measures of 3 fungal pathogens with respect to importing hulled hemp seeds.

### **3. New Zealand proposes to amend Food Notice: Maximum Residue Levels for Agricultural Compounds**

On **25 March 2024**, NZ MPI is proposing to amend the New Zealand ((Maximum Residue Levels for Agricultural Compounds) Food Notice. This concerns maximum residue levels for agricultural compounds such as coumatetralyl, difenacoum, difethialone, and diphacinone- which are now 0.001 mg/kg for all foods with exceptions. Those amendments are located on Schedule 1 of the Food Notice.

NZ MPI invites comments on the proposal. Submissions close on **24 May 2024**.

## **European Union**

### **3. EU new regulations on sustainable packaging**

On **4 March 2023**, the EU Council and EU parliament reached a provisional agreement on sustainable packaging rules and measures.

The agreement sets packaging reduction targets (5% by 2030, 10% by 2035 and 15% by 2040). A key measure in the provisional agreement is the ban on polyfluorinated alkyl substances (PFASs) or 'forever chemicals' in food contact materials and packaging material.

Other key measures include:

Minimum target requirements for recycled content in packaging

Minimum recycling targets

Consumers should have option of bringing their own container

## **United States**

### **3. FDA adds food chemicals to its post-market safety review**

On **4 March 2024**, the US Food and Drug Administration (**FDA**) updated its list of chemicals in the food supply that are undergoing post-market assessment and review.

This list was first published in **July 2023**. The recent update includes various food contact substances and contaminants, including ones that have recently been banned or restricted in various US States such as California.

These chemicals include:

Arsenic

Authorised PFAS in Food contact materials

Brominated vegetable oil

Phthalates

Other chemicals

## **1. FDA issues final rule to update regulations on authorizing food contact substances**

On **21 March 2024**, The US FDA issued a final rule outlining when and how an FDA food contact notification (**FCN**) remains effective.

FCNs are sought by companies when they file to the FDA to obtain permission for a new food contact substance or a new use of an existing food contact substance. An effective FCN enables such use.

The new regulations enable the FDA to revoke an FCN for reasons other than safety. This includes for abandonment, where a manufacturer no longer produces or uses or supplies the substance.

## **2. FDA extends the comment period for the draft guidance on Preventive Controls for Human Food (PCHF) by an additional 60 days**

On **21 March 2024**, the FDA extended the comment period two specific chapters of the draft guidance on the PCHF: chapter 11- Food Allergen Program and chapter 16- Acidified Foods.

The PCHF is related to current good manufacturing practice as well as hazard analysis to prevent risks in human food. This draft guidance was published on September 27 2023 and extended period was a response to stakeholders requested additional time to make submissions.

The new comment period ends on **24 May 2024**.

## **3. Florida bans lab grown meat**

In **March 2024**, the Florida legislature passed a bill banning the manufacture and sale of lab grown meat.

Violations will be classified as a second degree misdemeanor, attracting penalties up to US \$1,000.

## China

### 1. China removes heavy tariffs on Australian wines

On **28 March 2024**, The Chinese Ministry of Commerce stated that they will end heavy tariffs that had been imposed on the Australian Wine Industry. China is Australia's largest wine export market, accounting for 40% of export value.

The tariffs imposed had ranged from 116-212% on wine in containers of two litres or less, resulting in a 99.76% loss in a \$1.7bn export market that ultimately fell to \$4 million.

If you have any questions on the contents of this article, please feel free to [contact us](#).

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**This is general information rather than legal advice and is current as of 8 Apr 2024. We therefore recommend you seek legal advice for your particular circumstances if you want to rely on advice or information to be a basis for any commercial decision-making by you or your business.**