

tober 1988, Senator Gareth Evans, Minister for Foreign Affairs and Trade, declared that Australia was willing to answer to the nations of the world for Australian policies and actions in the field of human rights.

We are taking special measures to accelerate access to services and to provide a basis for further economic, social and legal advancement. We are seeking to complete a compact or agreement with our Aboriginal people and Islanders acknowledging their rightful place, not only in the past of our ancient Continent, but in its present and future . . . we have undertaken to the descendants of our original inhabitants . . . that we will leave undone nothing that can be done to right this great wrong of our past.

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food regulation – you are what you eat

A cucumber should be well sliced, and dressed with pepper and vinegar, and then thrown out as good for nothing.

Samuel Johnson, 1773

Although the law should establish and enforce general standards of health and safety for food, much of the law governing the content, sale, or packaging of food in Australia should be repealed or reformed. This is the central conclusion of a report *Food Regulation in Australia* published jointly by the federal Business Regulation Review Unit (BRU) and the Victorian Regulation Review Unit. If these recommendations are accepted by governments, laws governing liability for compensation of persons who suffer loss or damage caused by unsafe or defective products, currently under consideration by the ALRC in cooperation with the VLRC and the NSWLRC, will become more important.

The report bases its proposals on the policy that the objectives of any regulatory law should be clearly stated, and the provisions of such laws should relate directly to those

objectives. It identifies the objectives of current food regulation laws as

- public health and safety
- promotion of nutritional values and dietary habits
- protecting the quality of food
- protection of consumers from fraud, dishonesty and deceptive practices
- provision of consumer information
- protection of certain products from competition.

Not all these objectives are compatible. The report, after examining the general operation of food regulation laws and a number of specific cases, concludes that much of the regulatory law governing the supply of food is inconsistent, unnecessarily detailed and outdated, and that it inhibits product innovation and competitiveness, especially in export markets.

effectiveness of standards. The BRU and RRU conducted an extensive study on the effectiveness of standards for ice cream and related products. They found that the standards had been established as a series of ad hoc responses to particular problems. Some of the standards were inconsistent and others were outdated. Because the standards are established by law, they are relatively difficult to change. Businesses gear their production processes to meeting the standards and this inhibits the introduction of new products and techniques. Products manufactured to meet Australian standards are not competitive in some export markets.

health and safety as the main objective. The report accepts that laws are necessary to maintain and promote health and safety, and that this is especially true of food. However, it favours laws framed in general, rather than specific, terms. It rejects the approach that 'bureaucrats know best' and suggests that laws should generally allow greater freedom of consumer choice. Only where officials have detailed information about the potentially hazardous effects of particular types of

food is there a case for specific food regulation. The report does not consider the argument that laws of this type produce considerable uncertainty among producers and consumers, because the exact requirements of the law in any given case can only be determined after the event and often only after protracted and expensive litigation.

information is important. The report acknowledges that consumers can only make an informed choice about products if they have adequate information upon which to base their choice. It asserts that information has costs and that provision of information about food should only be required where those costs are justified. On this basis, the report recommends extensive modification of the Australian Food Standards Code dealing with packaging and labelling of food and the regulation of food containers. The Code, agreed upon by Commonwealth and State governments, forms the basis of most food regulation in Australia. These modifications include the simplification or elimination of most of the standards relating to food and food additive labelling and repeal of most of the provisions dealing with standard packing sizes and restrictions on 'free space' within food packages.

economic justifications. Most of the recommendations are based on economic assumptions about market behaviour which are not fully substantiated in the report. While the existence of market imperfections and the need for government intervention are acknowledged, the economic assumptions include the view that even imperfectly informed consumers, or consumers whose range of choices are limited by factors such as poverty, illiteracy or lack of understanding, will make choices more likely to further the objectives of regulation than will governments. The emphasis of the report is on self-regulation and voluntary standards, rather than on mandatory controls imposed by governments.

laws should be certain. While economic considerations may suggest that laws should be highly flexible, submissions to the ALRC in its product liability reference, especially from smaller manufacturing businesses, have called for more, and more specific, mandatory standards.

government reaction. As the report points out, food accounts for 17% of retail sales in Australia and the food industry represents 20% of Australian manufacturing industry. The implications of the report may affect a considerable part of Australian business activity. Neither the federal nor the Victorian government has yet announced a reaction to the report. However the Australian Consumers' Association is critical of the report. The *Sydney Morning Herald* reported on 1 February 1989 that:

The Australian Consumers' Association and the Food Industry Council of Australia have become locked in bitter conflict over claims by the association that deregulation of the food industry is going to lead to inferior products. The association announced yesterday that if changes produced by the Federal and Victorian Governments' Business Regulation Review Units were enacted, Australians would end up 'eating poorer quality food dressed up with a range of additives'. The association said that as part of the deregulation, labelling requirements would be relaxed and that consumers would be 'deprived of a lot of information that could affect their health and purchasing power'. The food industry council has replied that the consumers' association's case is 'an emotive, exaggerated and erroneous attempt to discredit the food industry and the Business Regulation Review Unit which has advocated reduced regulation of food in Australia'.