



AUSTRALIAN  
**FOOD &  
GROCERY**  
COUNCIL

## **AFGC SUBMISSION**

**RESPONSE TO: SECURITY LEGISLATION  
AMENDMENT (CRITICAL INFRASTRUCTURE) BILL  
2020 EXPOSURE DRAFT**

25 November 2020

*Sustaining Australia*

## PREFACE

The Australian Food and Grocery Council (AFGC) is the leading national organisation representing Australia's food, beverage and grocery manufacturing sector.

There are over 180 member companies, subsidiaries and associates who together comprise 80 per cent of the gross dollar value of the processed food, beverage and grocery products industries.

With an annual turnover in the 2018-19 financial year of \$127.1 billion, Australia's food and grocery manufacturing sector makes a substantial contribution to the Australian economy and is vital to the nation's future prosperity.

The diverse and sustainable industry is made up of over 15,861 businesses and accounts for over \$75.1 billion of the nation's international trade. These businesses range from some of the largest globally significant multinational companies to small and medium enterprises. Industry made \$2.8 billion in capital investment in 2018-19.

Food, beverage and grocery manufacturing together forms Australia's largest manufacturing sector, representing 31.4 per cent of total manufacturing turnover in Australia.

The food and grocery manufacturing sector employs more than 274,800 Australians, representing 32.2 per cent of total manufacturing employment in Australia.

Many food manufacturing plants are located outside the metropolitan regions. The industry makes a large contribution to rural and regional Australia economies, with almost 40 per cent of the total persons employed being in rural and regional Australia.

It is essential to 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.

In Australia, the food and beverage (grocery was not included in the Government's strategy but is recognised as a vital industry) manufacturing sector has been confirmed as an essential service and a National Strategic Priority. The Australian Government through its recently announced Manufacturing Strategy has challenged the sector to develop an industry roadmap describing how it will contribute to the post-COVID-19 recovery through expanding manufacturing, growing jobs, boosting exports and enhancing sovereign capability across the sector.

Food and beverage manufacturing plays an integral role in Australia's economic and social fabric. It is the lifeblood of many regional and rural communities. As such it is well placed to do the heavy lifting in the Manufacturing Strategy through its size, its know-how in adding value to the commodities of the agricultural sector, and to leverage the reputation for safety and quality among consumers in overseas markets.

*This submission has been prepared by the AFGC and reflects the collective views of the membership.*

## INTRODUCTION

The Australian Food and Grocery Council (AFGC) welcomes the opportunity to comment on the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* (“the Bill”)

The AFGC presented a detailed submission to the *Protecting Critical Infrastructure and Systems of National Significance Consultation Paper* in September 2020. In that submission the AFGC noted that the food (and beverage)<sup>1</sup> and grocery manufacture and supply sector was an *essential service* as identified by the Australian Government during its response to the COVID-19 outbreak in early 2020. This has been confirmed more recently as the Government has identified the sector as a *National Strategic Priority*.

Notwithstanding this, the AFGC also argued that the food and grocery manufacture and supply sector should not be classified as *critical infrastructure* for the following reasons:

1. manufacture and supply chain infrastructure is dispersed widely across the country
2. there is a high degree of substitutability across the products – several manufacturers or sources of supply exist for practically all products, and
3. there are multiple physical paths to market as a majority of product is transported by road.

In other words, there is a great deal of redundancy in the paths to market, or more specifically to individual Australians, in the food and grocery manufacture and supply sector.

## COMMENTS ON THE BILL

### DEFINING CRITICAL INFRASTRUCTURE

The AFGC supports the food and grocery manufacture and supply sector being recognised as supplying key components for sustaining Australians.

The AFGC also notes that in the Exposure Draft (Schedule 1, Part 1, page 16) the “*food and grocery sector means the sector of the Australian economy that involves: manufacturing; or processing or; packaging or; distributing or; supplying food and grocery products, on a commercial basis*”.

The Exposure Draft (Section 8D (h), page 26) then identifies the food and grocery sector as a *critical infrastructure sector*.

Subsequently Section 8E (9), (page 27) confirms that for the purpose of the “...*Act, a critical food and grocery asset is taken to relate to the food and grocery sector.*”

Later in the Exposure Draft, Section 12 K (page 42) provides more detail vis:

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<sup>1</sup> For simplicity in this submission “food” includes beverages, consistent with the definition in the Australia New Zealand Food Standards Code.

*12K Meaning of critical food and grocery asset*

(1) An asset is a **critical food and grocery asset** if it is a network that:

(a) is used for the distribution or supply of:

(i) food; or

(ii) groceries; and

(b) is owned or operated by an entity that is:

(i) declared by the rules to be a critical supermarket retailer; or

(ii) declared by the rules to be a critical food wholesaler; or

(iii) declared by the rules to be a critical grocery wholesaler.

*Note: The rules may prescribe that a specified critical food and grocery asset is not a critical infrastructure asset (see section 9).*

(2) For the purposes of subsection (1), if:

(a) a network is used for the distribution of food or groceries; and

(b) the network is operated under a contract with an entity referred to in paragraph (1)(b);

the network is taken to be operated by that entity.

This wording seems to indicate that only the retailer sector and upstream supply chain encompassing distributors and wholesalers are *critical food and grocery assets*. The AFGC notes, however, that the Exposure Draft does not explicitly state that **food manufacturing** is not included as a *critical food and grocery asset*.

Furthermore, the Explanatory Document (paragraph 140, page 25) states “*Other parts of the sector (for example food manufacturing) are not considered critical food and grocery assets as they are often disaggregated and, if disrupted, are unlikely to have a severe and widespread impact on the availability of food and grocery*”

The AFGC agrees with this logic but suggest, for clarity, that food manufacturing be explicitly exempted in the legislation. If this is not deemed appropriate, then when rules are being developed for the sector it should be clear that food manufacturing is exempt.

The AFGC also notes that the term “*food and grocery*” when used by the industry includes non-food grocery products. These are items such as personal care products (over-the-counter medicines, toothpaste, skin lotions, cosmetics, toilet tissues), house care products (cleaning products, insecticides), pet care products, and numerous other miscellaneous items. Many of these products are critical to the well-being of Australians and, as with food products, their distribution to the population is important. They come down the same supply chains as food products with wholesalers, distributors and supermarket retailers responsible for the logistics. The AFGC suggests that it be made clear either in the Bill itself or in explanatory documents that supply chains for these goods are *critical food and grocery assets*. Moreover, it should also be made clear that **non-food grocery manufacturing** should be exempt from being critical food and grocery assets as is suggested for **food manufacturing**

### Recommendation

The AFGC recommends that **food and non-food grocery manufacturing** be excluded from *critical food and grocery assets* for the purposes of the **Security Legislation Amendment (Critical Infrastructure) Bill 2020**.

## POSITIVE SECURITY OBLIGATIONS

The Explanatory Document (paragraphs 17 to 26) describes the additional obligations (under the *Security Legislation Amendment (Critical Infrastructure) Bill 2020*) of owners of critical infrastructure assets to protect those assets to ensure that ‘*resilience of essential services is strengthened*’.

As **food manufacturing** is not considered part of *critical food and grocery assets* the AFGC understands that companies which have **food manufacturing** as their business will not have *Positive Security Obligations*. For the reasons described above this exemption should also apply to **(non-food) grocery manufacturing**.

## REGULATION

The AFGC notes that no appropriate regulator of the food and grocery manufacture and supply sector has been identified and therefore the Department of Home Affairs will regulate compliance with the Positive Security Obligations. The AFGC concurs with this assessment and conclusion.

## CONCLUSION

The AFGC has read the Exposure Draft of the *Security Legislation Amendment (Critical Infrastructure) Bill 2020* with some care and concluded that critical food and grocery assets comprise:

- 1) networks of food and grocery supply and distribution only, and not
- 2) food and (non-food) grocery manufacturing facilities.

The AFGC stands ready to expand on the points made in this submission, and its previous submission, should it be required.