

SUPPLEMENTARY SUBMISSION FROM THE TREASURY TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ECONOMICS ON THE *FOOD STANDARDS AMENDMENT (TRUTH IN LABELLING – PALM OIL) BILL 2011*

The Treasury provides this supplementary submission to the House of Representatives Standing Committee on Economics for its inquiry on the *Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011* (Bill). The purpose of this submission is to clarify what effect the proposed amendments in Schedule 2 to the Bill will have on section 33 of the Australian Consumer Law (ACL).¹

Section 33 of the ACL currently prohibits a person from engaging in conduct that is liable to mislead as to the characteristics of any goods (including food). Schedule 2 to the Bill proposes to amend section 33 by inserting a new subsection 33(2) which would provide that 'the characteristics of any goods include the use of palm oil in the goods or to produce the goods'.

The Treasury considers that the proposed amendments would not substantively alter the way section 33 of the ACL currently operates. We consider that section 33 of the ACL currently does *not* exclude palm oil as a relevant characteristic of any goods, and is sufficiently broad to capture ingredients (such as palm oil) as a relevant characteristic, for the purpose of determining whether a conduct is liable to mislead.²

Further, the Treasury does not believe that the new subsection 33(2) would create a legal requirement for palm oil to be explicitly stated on the label of a good which contains or uses palm oil. Rather, if there is a requirement in other legislation to disclose palm oil on the label of a good, then section 33 of the ACL would apply to prohibit misleading conduct in relation to the disclosure (or the non-disclosure) of this information. We consider this to be the situation both under the current section 33 and under the proposed amendments to section 33.

¹ The ACL is located in Schedule 2 to the *Competition and Consumer Act 2010*.

² For examples relating to the application of section 33 to representations about ingredients, see *ACCC v Cadbury Schweppes Pty Ltd* [2004] FCA 516 and *TPC v GLO Juice Co Pty Ltd* (1987) 73 ALR 407.