

Introduction

Background

- 1.1 On 7 July 2011, the Selection Committee referred the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2011 to the committee for inquiry and report.
- 1.2 The Bill was reported in the House of Representatives as being received from the Senate, and read a first time, on 4 July 2011.
- 1.3 A previous version of the Bill, the Food Standards Amendment (Truth in Labelling-Palm Oil) Bill 2009, was referred to the Senate Community Affairs Legislation Committee for inquiry and report, with a report date of August 2010. The Senate inquiry lapsed at the prorogation of the 42nd Parliament on 19 July. After the 2010 election, the Bill was reintroduced and the Senate recommenced the inquiry with the Senate committee reporting in June 2011. The Senate amended and passed the Bill after the committee report was tabled.

Purpose and overview of the Bill

- 1.4 The stated purpose of the Bill is to provide for the labelling of palm oil in food and other products.
- 1.5 This Bill's intention is to give consumers information to allow them to make an informed choice about whether they want to purchase or consume a product containing palm oil.

- 1.6 The Bill amends the *Food Standards Australia New Zealand Act 1991* to require Food Standards Australia New Zealand (FSANZ) to develop and approve labelling standards to be used by food producers, manufacturers and distributors of food containing palm oil. It also seeks to amend the *Competition and Consumer Act 2010* to include the use of palm oil in the characteristics of any goods for the purposes of misleading conduct as to the nature of goods.
- 1.7 In relation to food labelling, the key provision of the Bill is that:
- The Authority must, within 6 months after the commencement of this section, develop and approve labelling standards that prescribe that producers, manufacturers and distributors of food containing palm oil, regardless of the amount of palm oil used in the food or used to produce the food, must list palm oil as an ingredient of the food.
- 1.8 In relation to the Australian Consumer Law, the key provision of the Bill is to insert the following into the misleading conduct offence:
- For the purposes of subsection (1) [the misleading conduct offence], the characteristics of any goods include the use of palm oil in the goods or to produce the goods.

Legislation that the Bill seeks to amend

The Australian food standards regime

- 1.9 The Australian food regulatory system is a shared undertaking between the Commonwealth and States and Territories. To operate, the system requires multiparty negotiation and consultation between these governments. Further, Australian food standards are also, as a matter of principle, coordinated with New Zealand.
- 1.10 The system separates policy decision making from the detailed task of developing food standards. The Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) is responsible for food regulation policy in Australia and New Zealand, while an independent agency (FSANZ) develops food standards and administers the Australia New Zealand Food Standards Code.
- 1.11 The system draws its authority from three separate legal instruments:

- the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) which establishes the Food Standards Australia New Zealand (FSANZ) as the regulatory authority for food;
 - the Food Regulation Agreement, to which the Commonwealth, State and Territory governments are parties; this establishes a regulatory framework for food that would be consistent across all Australian States and Territories, as well as establishing the Australia and New Zealand Food Regulation Ministerial Council (the Council), which provides oversight of the food regulatory system; and
 - the Australia New Zealand Joint Food Standards Treaty which establishes a system of joint food standards to operate across both nations.
- 1.12 Food standards are developed by FSANZ following Council policy and the FSANZ Act. They are spelt out in the Australia New Zealand Food Standards Code (the Code) whose legal authority is provided by State, Territory and New Zealand legislation.¹
- 1.13 The purpose of FASNZ is set out as follows in the FSANZ Act, section 18:
- (1) The objectives (in descending priority order) of the Authority in developing or reviewing food regulatory measures and variations of food regulatory measures are:
 - (a) the protection of public health and safety; and
 - (b) the provision of adequate information relating to food to enable consumers to make informed choices; and
 - (c) the prevention of misleading or deceptive conduct.
- 1.14 Though ownership of the system is shared, compliance is left to the State and Territory health departments which enforce the Code.

Australian consumer law (ACL)

- 1.15 The cooperative approach to food standards also applies to consumer law. In October 2008, the Council of Australian Governments (COAG) agreed to a new national consumer policy framework which was intended to enhance consumer protection, reduce regulatory complexity for

1 Department of Health and Ageing, *Submission 15*, pp. 2-3.

businesses and encourage the development of a seamless national economy.²

1.16 The ACL was intended to support COAG's *National Partnership Agreement to Deliver a Seamless National Economy*, which aimed at reducing regulatory duplication and inconsistency. To do this, the ACL replaces specific provisions in at least 20 overlapping laws at both the Commonwealth and State and Territory level.³ Any changes to the ACL by the Commonwealth, for example, would require that the States and Territories also amend their various laws to maintain the national consistency of the system. Importantly, the Agreement states: 'This Agreement may be amended only by the unanimous agreement of all the Parties'.⁴

1.17 The purpose of this policy framework for consumer protection is to improve consumer wellbeing through empowerment and protection, to foster competition and to enable the confident participation of consumers in markets in which both consumers and suppliers alike trade fairly. This purpose is in turn supported by six operational objectives:

- to ensure that consumers are sufficiently well-informed to benefit from and stimulate effective competition;
- to ensure that goods and services are safe and fit for the purposes for which they were sold;
- to prevent practices that are unfair;
- to meet the needs of those consumers who are most vulnerable or are at the greatest disadvantage;
- to provide accessible and timely redress where consumer detriment has occurred; and
- to promote proportionate, risk-based enforcement.

1.18 The Australian Consumer Law took effect in January 2011. It is too soon to quantify its benefits, but the Productivity Commission estimated that Australian consumers and businesses will obtain benefits of up to \$4.5 billion per annum. These benefits will accrue by increasing the capacity of consumers to make informed decisions, reduced compliance

2 Intergovernmental Agreement For The Australian Consumer Law (July 2009); for the full text see http://www.consumerlaw.gov.au/content/the_acl/downloads/acl_iga.pdf.

3 Treasury, *Submission 22*, p. 2.

4 Intergovernmental Agreement For The Australian Consumer Law (July 2009), p. 5.

costs for business, enhanced productivity and innovation and reduced transaction costs.⁵

Developments prior to the Bill

Labelling Logic: Review of Food Labelling: Law and Policy (2011)

- 1.19 Separately to the Bill, the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council or MINCO) will respond to the recommendations of the review on 9 December 2011. In particular, it will consider a whole of Commonwealth, State, Territory and New Zealand Government response to the report, which the Department of Health and Ageing is currently coordinating.
- 1.20 In October 2009, the MINCO announced a Review of Food Labelling Law and Policy. An independent expert panel, chaired by former Australian Health Minister Dr Neal Blewett AC, was appointed to conduct the review. He was joined on the panel by professionals with backgrounds in food industry communications, marketing and corporate affairs, consumer behaviour and food and nutrition policy.
- 1.21 The terms of reference of the review required that the panel:
- examine the policy drivers impacting on demands for food labelling;
 - consider what should be the role for government in the regulation of food labelling and what principles should guide decisions about government regulatory intervention;
 - consider what policies and mechanisms are needed to ensure that government plays its optimum role;
 - consider principles and approaches to achieve compliance with labelling requirements and appropriate and consistent enforcement;
 - evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front-of-pack labelling against terms of reference 1–4 above; and
 - make recommendations to improve food labelling law and policy.
- 1.22 The review received approximately 6,600 submissions and heard from approximately 550 attendees at public consultation sessions.
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5 Treasury, *Submission 22*, p. 2.

- 1.23 The review wrote up its findings in its report, *Labelling Logic: Review of Food Labelling: Law and Policy* (2011) and made 61 recommendations. The most important for present purposes are:

Recommendation 2: That food labelling policy be guided by an issues hierarchy in descending order of food safety, preventative health, new technologies and consumer values issues. Regulatory action in relation to food safety, preventative health and new technologies should primarily be initiated by government and referenced in the Food Standards Code. Regulatory action in relation to consumer values issues should generally be initiated by industry and referenced to consumer protection legislation, with the possibility of some specific methods or processes of production being referenced in the Food Standards Code.

Recommendation 12: That where sugars, fats or vegetable oils are added as separate ingredients in a food, the terms 'added sugars' and 'added fats' and/or 'added vegetable oils' be used in the ingredient list as the generic term, followed by a bracketed list (e.g., added sugars (fructose, glucose syrup, honey), added fats (palm oil, milk fat) or added vegetable oils (sunflower oil, palm oil)).

- 1.24 The Department of Health and Ageing is coordinating the Government's response to the *Labelling Logic* review of food labelling, which is expected to be considered by the Ministerial Council on 9 December 2011.

Senate inquiry

- 1.25 The Senate committee reported on an earlier version of the Bill. The differences between the two versions of the Bill are:
- the earlier Bill had a second purpose of encouraging the use of certified sustainable palm oil to help protect wildlife habitat;
 - the earlier Bill prescribed the labelling of palm oil if it had been certified as sustainable in accordance with regulations; and
 - the earlier Bill did not seek to amend the Australian Consumer Law.
- 1.26 The Senate committee made the following specific recommendations:
- FSANZ consider whether paragraph 18(1)(b) [stipulating that one of the authority's objectives is to help consumers make informed choices] should be read independently of paragraph 18(1)(a) of its Act [requiring the authority to protect public health and safety] in assessments of food labelling applications.

- In the case of palm oil labelling, that evidence placed before this committee be taken by FSANZ as one indication that a cost-benefit analysis may identify significant community benefits that would be gained from the provision of sought-after food labelling information, while possibly involving limited costs.
 - The government fully consider Recommendation 12 of the *Review of Food Labelling Law and Policy (2011)*.
- 1.27 The **Senate committee recommended that the Bill not be passed**. In particular, the Senate committee noted that only FSANZ could reach an appropriate judgement. The committee also observed that the level of community interests indicated that there are potentially significant benefits to labelling palm oil. The Senate committee concluded that voluntary actions were preferable to those in the Bill.
- 1.28 The committee minority report recommended that the Bill be passed to support consumers' right to know what they are eating and to protect the habitat of orangutans.
- 1.29 After the committee report was tabled, the Senate amended the Bill. The amendments were:
- to remove the reference to sustainable palm oil so that all palm oil would be required to be labelled. This was done due to concerns expressed in the Senate about the difficulty of ascertaining whether the palm oil in a product was produced from a sustainable source;
 - to include a requirement that the Australian Consumer Law (ACL) specifically cover palm oil as a characteristic of a product. This was done to ensure that the ACL covered palm oil and was only to apply to products manufactured 12 months after the commencement of this provision to give an implementation period for producers; and
 - to remove one of the purposes of the Bill, which related to certified sustainable palm oil, and to broaden the consumer information purpose to apply to palm oil in goods, not just foods. This was done to ensure consistency with the other amendments.⁶

The story of palm oil

- 1.30 Global demand for palm oil has increased dramatically over the past four decades. The World Bank reports that world demand for palm oil was

⁶ Senator Nicholas Xenophon, *Senate Hansard*, 23 June 2011, pp. 3650, 3653-54.

approximately 2 million tonnes in 1970 and in 2010 grew to over 50 million tonnes.⁷

- 1.31 The reason for this growth is that palm oil has considerable advantages for both its producers and its end-users. The palm oil plant is very high-yielding. The Malaysian Ministry of Plantation Industries and Commodities advised the committee that the palm oil plant has an average yield of 4.1 tonnes per hectare per year. This is much higher than other vegetable oil crops. For example, rapeseed and sunflower plants yield 0.75 and 0.5 tonnes per hectare per year respectively.⁸ The Australian Institute of Horticulture advised that, unlike many other oil crops, the oil palm can grow on natural rainfall and does not require intensive irrigation or cultivation.⁹
- 1.32 Palm oil is also very attractive to the food industry. Professor Sinclair of Deakin University advised the committee that it is a low cost oil that is solid at room temperature. This latter property is important because it prevents the oil leaking out of food over time. The two types of oils that have this property are trans fatty acids and saturated fats. Trans fatty acids have been commonly used in the United States where surplus soya bean oil was partially hydrogenated to make it more solid at room temperature. Australia has traditionally used saturated fats such as pig fat (lard) and beef fat (tallow), but palm oil is now much more common.¹⁰

Conduct and scope of the inquiry

- 1.33 The objective of the inquiry is to scrutinise the technical adequacy of the Bill and its ability to deliver the policy intent.
- 1.34 This inquiry followed an inquiry by the Senate Community Affairs Legislation Committee into the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2010. The Bill that the Senate committee examined was similar to the Bill in the current inquiry and the Senate committee received over 500 submissions. In order to conduct the inquiry at the least inconvenience to the public, the committee agreed that it would take into account the submissions made to the Senate committee
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7 The World Bank and IFC, *The World Bank Group Framework and IFC Strategy for Engagement in the Palm Oil Sector*, 31 March 2011, p. 11, <<http://www.ifc.org/ifcext/agriconsultation.nsf/Content/KeyDocuments>> viewed 29 August 2011.

8 *Submission 18*, p. 4.

9 *Submission 34*, p. 3.

10 Professor Andrew Sinclair, *Committee Hansard*, Canberra, 19 August 2011, pp. 33-35.

for this inquiry. Organisations and individuals could make additional submissions if they so wished.

- 1.35 Details of the inquiry were placed on the committee's website. A media release announcing the inquiry and seeking submissions was issued on Wednesday, 3 August 2011. Advertisements for the inquiry were placed in the *Australian* on Friday, 5 August 2011 and Thursday, 11 August 2011.
- 1.36 Thirty-seven submissions and two supplementary submission were received and are listed at Appendix A. Seven exhibits were received which are listed at Appendix C.
- 1.37 Public hearings were held in Canberra on Thursday 18 August 2011 and Friday 19 August 2011. A list of the witnesses who appeared at the hearing is at Appendix B. The submissions and transcript of evidence were placed on the committee's website at <http://www.aph.gov.au/house/committee/economics/index.htm>.