

# Chapter 1

## Introduction

### Referral

1.1 On 15 October 2015, the Senate referred the provisions of the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015 to the Senate Community Affairs Legislation Committee (committee) for inquiry and report by 30 November 2015.<sup>1</sup>

1.2 Appendix 4 to the Senate Selection of Bills Committee's report proposes that the committee scrutinise the 'impact of the amendments to definitions in the [Food Standards Australia New Zealand] Act'. The committee has also been asked to scrutinise 'the impact of amendments of the composition of the [Food Standards Australia New Zealand] board detailed in Schedule 2 of the Bill, including the potential impact of reducing the representation of science and public health expertise on the board'.<sup>2</sup>

### Conduct of the inquiry

1.3 Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website.<sup>3</sup> The committee also wrote to 12 organisations and individuals, inviting submissions by 5 November 2015. Submissions continue to be submitted after that date.

1.4 The committee received eight submissions to the inquiry.

### Background

1.5 Food Standards Australia New Zealand (FSANZ) is a bi-national Government agency representing Australia and New Zealand that 'develops and administers the Australia New Zealand Food Standards Code, which lists requirements for foods such as additives, food safety, labelling and [Genetically Modified] foods. Enforcement and interpretation of the code is the responsibility of state and territory departments and food agencies within Australia and New Zealand'.<sup>4</sup>

1.6 The work of FSANZ is guided by the Australia and New Zealand Food Regulation Ministerial Council (the council) which is:

primarily responsible for the development of domestic food regulatory policy and the development of policy guidelines for setting domestic food

---

1 *Journals of the Senate*, No. 122—15 October 2015, p. 3260.

2 Senate Selection of Bills Committee, *Report No. 13 of 2015*, 15 October 2015, Appendix 4.

3 See:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/FSANZ](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/FSANZ).

4 Food Standards Australia New Zealand, <http://www.foodstandards.gov.au/Pages/default.aspx> (accessed 13 November 2015).

standards. The Forum also has the capacity to adopt, amend or reject standards and to request that these be reviewed.<sup>5</sup>

1.7 Membership of the council consists of ministerial representatives from Australian states, territories and local government, and New Zealand. The Board of FSANZ takes recommendations about food standards, guidelines and codes to the council for consideration.<sup>6</sup>

1.8 Until recently, the council was one of the 22 councils that met under the auspices of the Council of Australian Governments (COAG). On 13 December 2013, COAG decided to streamline the number of councils from 22 to eight. Despite the council being one of those removed from COAG, this would not affect the ongoing work of the council. The council determined that it would change its name to the Australia and New Zealand Forum on Food Regulation (the forum).<sup>7</sup>

1.9 This change requires an amendment to the *Food Standards Australia New Zealand Act 1991* (the Act). This amendment 'presents an opportunity to make other amendments in the same bill to improve the clarity and operation of the legislation'.<sup>8</sup>

1.10 In a concurrent unrelated process, a review of the Food Standards Australia New Zealand Board appointment process was conducted in 2013. This review made a number of recommendations which were accepted by the forum and form the basis of the legislative amendments in Schedule 2 of the Bill. These include amending:

- the compositional requirements of the FSANZ Board to address the need for flexibility to accommodate FSANZ's future work requirements; and
- in relation to certain categories of Board members, amend the nomination process to be an open market process by advertising for upcoming Board vacancies externally as well as seeking nominations from identified organisations.<sup>9</sup>

---

5 Department of Health, *Australia and New Zealand Ministerial Forum on Food Regulation*, <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-anz.htm> (accessed 13 November 2015).

6 See: <http://www.health.gov.au/internet/main/publishing.nsf/Content/foodsecretariat-members.htm> (accessed 13 November 2015). See also: <http://www.foodstandards.gov.au/about/board/Pages/default.aspx> (accessed 13 November 2015).

7 The Hon Sussan Ley MP, Minister for Health, Aged Care and Sport, *House of Representatives Hansard*, 17 September 2015, p. 10 526.

8 The Hon Sussan Ley MP, Minister for Health, Aged Care and Sport, *House of Representatives Hansard*, 17 September 2015, p. 10 526.

9 Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015, Explanatory Memorandum (EM), pp 1–2.

---

***Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015***

1.11 On 17 September 2015, the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015 was introduced into the House of Representatives by the Minister for Health, Aged Care and Sport, the Hon Sussan Ley MP.<sup>10</sup> The Bill received a second and third reading before being transmitted into the Senate on 15 October 2015 by the Assistant Minister to the Prime Minister, Senator the Hon James McGrath, with debate adjourned until the 30 November 2015.<sup>11</sup>

**Key provisions and purpose of Bill**

1.12 This Bill seeks to amend the *Food Standards Australia and New Zealand Act 1991* (the Act) to 'reflect the change of name of the former Australia and New Zealand Food Regulation Ministerial Council to the forum'.

1.13 The Bill also contains a number of consequential and minor amendments to the workings of the forum. These include:

- mak[ing] amendments to improve the clarity and operation of the legislation—these amendments are intended to improve regulatory efficiency and provide greater clarification for businesses and Food Standards Australia New Zealand (FSANZ), by removing ambiguity and improving consistency in the way in which the act outlines procedures for consideration of food regulatory measures; and
- changes in relation to consumer rights, science, public health and food industry board members positions, amends the FSANZ Board's compositional requirements and appointment process, in accordance with recommendations endorsed by the forum, to:
  - address the need for flexibility to accommodate FSANZ's future work requirements, and
  - include a competitive selection process (such as external advertising), which the bill allows to occur simultaneously with the existing nomination process when recruiting for each vacant FSANZ Board member position.<sup>12</sup>

1.14 This Bill is comprised of two schedules, with Schedule 1 having two parts.

---

10 The Hon Sussan Ley MP, Minister for Health, Aged Care and Sport, *House of Representatives Hansard*, 17 September 2015, p. 10 526.

11 *Journals of the Senate*, No. 122—15 October 2015, p. 3278. See also: *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bId=r5542](http://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r5542) (accessed 16 November 2015).

12 EM, p. 3.

### ***Schedule 1***

1.15 Primarily, this schedule proposes to change the name of the Australia and New Zealand Food Regulation Ministerial Council to the Australia and New Zealand Ministerial Forum on Food Regulation. There are a range of consequential amendments that relate to this change.

1.16 Under the current Act, an exhaustive list of government agencies need to be informed of all changes to FSANZ standards, guidelines and codes. A more precise definition of an 'appropriate government agency' is provided in this Bill, meaning that only government agencies relevant to the change will be informed of any changes. Consequently, item 11 repeals section 19 of the Act that requires FSANZ to refer any matter dealing with GM food to the Office of the Gene Technology Regulator (OGTR). As a result, item 4 repeals the definitions of "Gene Technology Regulator", "GMO (Genetically Modified Organism)" and "GM (Genetically Modified) Product".<sup>13</sup>

1.17 This schedule also seeks to modernise the manner in which FSANZ communicates draft standards or variations of a draft standard with the public and non-government stakeholders. Currently, FSANZ must publish a notice in a generally circulating newspaper; however under the proposed changes, these notices would only need to be published on the FSANZ website.<sup>14</sup>

1.18 Items 14, 32 and 87 of the Bill clarifies that the inclusion of a Regulation Impact Statement (RIS) in reports to the FSANZ will now only be required if FSANZ has requested that a RIS be prepared as part of that report.<sup>15</sup> These provisions refer to reports made under section 33 of the Act that refers to 'Approving the draft standard or draft variation'; section 63 of the Act that refers to 'Review of decisions'; and section 101 of the Act that refers to 'Re-affirm[ing] the standard or variation or propose changes'.<sup>16</sup>

1.19 FSANZ currently has a food standard that regulates nutrition content claims and health claims on food labels and advertising. Items 23 and 41 of this Bill seeks to remove a requirement whereby draft variations are assessed 'against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims'. This is primarily because such criteria do not exist. Instead high level health claims are based on '13 pre-approved food-health relationships'.<sup>17</sup>

---

13 EM, pp. 5.

14 EM, pp 5–8.

15 EM, p. 7.

16 *Food Standards Australia New Zealand Act 1991*, s. 33, 63 and 101. See also: EM, p. 7.

17 EM, p. 6. See also: Food Standards Australia New Zealand, *Nutrition content claims and health claims*, January 2013, <http://www.foodstandards.gov.au/consumer/labelling/nutrition/Pages/default.aspx> (accessed 16 November 2015).

1.20 There is no financial impact relating to this schedule.<sup>18</sup>

1.21 Part 1 of schedule 1 of this Bill is intended to commence the day after Royal Assent. Part 2 of the schedule is intended to commence on 'a single day to be fixed by proclamation, but if the provisions do not commence within a 12 month period beginning on the day the Act receives Royal Assent, the provisions do not commence at all'.<sup>19</sup>

### ***Schedule 2—appointing members to the Board***

1.22 This schedule proposes to amend the compositional requirements for the FSANZ Board including quotas for the qualifications and experience of members who are selected as Board members. The qualifications and experience of members are defined in item 1 and include representatives and individuals with expertise in consumer rights member, food industry, and science and public health member. These changes to the appointment process for members of the FSANZ Board reflect recommendations from the Board review process which were endorsed by the forum.<sup>20</sup>

1.23 There is no financial impact relating to this schedule.<sup>21</sup>

1.24 These changes are intended to commence on 1 January 2016.<sup>22</sup>

## **Consideration of the Bill by other committees**

### ***Scrutiny of Bills***

1.25 The Senate Standing Committee for the Scrutiny of Bills made no comment on this Bill.<sup>23</sup>

### ***Human Rights***

1.26 As the Bill does not engage human rights, the Parliamentary Joint Committee on Human Rights does not consider that the Bill requires additional comment.<sup>24</sup>

## **Acknowledgement**

1.27 The committee thanks those organisations who made submissions to the inquiry.

---

18 EM, p. 2.

19 EM, p. 4.

20 EM, pp 11–14.

21 EM, p. 2.

22 EM, p. 4.

23 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 11 of 2015*, 14 October 2015, p. 12.

24 Parliamentary Joint Committee on Human Rights, *Twenty-ninth report of the 44<sup>th</sup> Parliament*, 13 October 2015, p. 1.

