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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**FOOD STANDARDS AUSTRALIA NEW ZEALAND
AMENDMENT BILL 2007**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by the authority of the Parliamentary Secretary to the Minister for Health and Ageing, Senator the Honourable Brett Mason)

FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT BILL 2007

OUTLINE

The Food Standards Australia New Zealand Amendment Bill (the Bill) was introduced in the Senate on 28 March 2007. On 29 March 2007 the Bill was referred to the Senate Standing Committee on Community Affairs for review and report by 1 May 2007. The Standing Committee for the Scrutiny of Bills also reviewed the Bill and included comments on the Bill in the Bills Alert Digest No. 5 of 2007. Both reports propose the development and tabling of relatively minor Government amendments. In light of these reports it is proposed to move three Government amendments to the Bill.

The Scrutiny of Bills Committee also commented that it would be helpful if the Explanatory Memorandum would more adequately explain certain items in Schedule 1 and Schedule 3 of the bill. A more detailed explanation of these items is set out on page 3 of this supplementary memorandum.

FINANCIAL IMPACT STATEMENT

The financial impact of the Bill and these amendments is cost neutral.

NOTES ON CLAUSES

Amendment 1

Schedule 1, item 13, page 6 (lines 11 and 12)

Subsection 3(1) definition of 'standard'

This item amends the definition of 'standard' in subsection 3(1) of the Act to clarify that text identified as an editorial note or an example is not part of a standard.

The original drafting specifies that 'boxed' text identified as editorial notes or examples are not part of a standard. The word 'boxed' has been removed so that proposed subsection 3(1) of the Act also excludes editorial notes and examples which are not in boxed text format. The amendment retains the policy intent that all text identified in the Food Standards Code as an editorial note or an example is not part of a standard.

Amendment 2

Schedule 1, item 76, page 67 (lines 10 to 16)

Subsection 109(9) the Authority may suspend its consideration of an application

Section 109 allows the Authority to suspend consideration of all applications if the Authority considers that the applications may be affected by the Policy guideline under development by the Australian and New Zealand Food Regulation Ministerial Council (the Ministerial Council).

This provision has been amended to provide applicants with an option to proceed with the assessment process of a paid application. The Authority will inform applicants about the role of the Ministerial Council in the standards development process and that approval of any standard, or amendment to a standard, resulting from assessment of the application (if

granted) may be rescinded or amended, if necessary, following any contrary policy decision by the Ministerial Council.

Amendment 3

Schedule 1, item 76, page 70 (lines 12 to 14)

Subsection 112(6)

Subsection 112(6) has retained an existing capacity provided in section 36A of the Act. Following consultation with FSANZ it appears that the provision has never been utilized and there are no existing regulations to this effect. This provision has been removed.

SUPPLEMENTARY INFORMATION FOR EXPLANATORY MEMORANDUM

Additional clarification on a number of issues raised by the Scrutiny of Bills Committee is provided below to be included in the Explanatory Memorandum for the Bill.

SCHEDULE 1 - NEW APPLICATION AND PROPOSAL PROCEDURES

Item 16 - Subsection 3B(4), page 6 (lines 23 to 24)

In the context of the Act, instruments issued by the Authority are generally legislative instruments. Instruments that are developed under a scheme that involves the Commonwealth and 'one or more States' and New Zealand are not subject to disallowance and sunseting under the *Legislative Instruments Act 2003* (the LIA).

Item 74 - Subsection 23(4) page 25 (lines 30 and 31), subsection 87(8) page 56 (lines 3 to 6), subsection 97(6) page 59 (lines 25 to 28) and subsection 106(6) page 64 (lines 26 and 27)

In the context of the Act, instruments issued by the Authority are generally legislative instruments. Instruments that are developed under a scheme that involves the Commonwealth and 'one or more States' and New Zealand are not subject to disallowance and sunseting under the LIA.

Item 74 - Subsection 86(4) page 53 (lines 1 and 2) and subsection 103(3) page 62 (line 12)

The types of decisions described in the proposed subsections are made by the Ministerial Council whose powers are independent of Commonwealth legislation. These decisions are not made in the exercise of a power delegated by the Parliament and are therefore not legislative instruments in accordance with the definition of legislative instruments in section 5 of the LIA. The provisions are declaratory and are included for the avoidance of doubt.

Item 74 - Subsection 111(4) page 59 (line 23)

A direction by the Authority prohibiting or restricting the publication of evidence in the course of a public hearing is not legislative in nature and is therefore not a legislative instrument in accordance with the definition of legislative instruments in section 5 of LIA. The provision is declaratory and is included for the avoidance of doubt.

SCHEDULE 3 - AMENDMENTS DEALING WITH COUNCIL REVIEW OF APPROVED DRAFT STANDARDS

Item 5 - Subsection 88(2) page 89 (lines 18 and 19)

The type of decision described in the proposed subsections is made by the Ministerial Council whose powers are independent of Commonwealth legislation. The decision is not made in the exercise of a power delegated by the Parliament and is therefore not legislative instrument in accordance with the definition of legislative instruments in section 5 of LIA. The provision is declaratory and is included for the avoidance of doubt.

Item 5 - Section 94 page 91 (lines 6 to 9)

In the context of the Act, instruments issued by the Authority are generally legislative instruments. Instruments that are developed under a scheme that involves the Commonwealth and 'one or more States' and New Zealand are not subject to disallowance and sunseting under the LIA.