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1. Executive Summary

Meat used as pet food (also termed as pet meat) is regulated in every state and territory of Australia except for Australian Capital Territory. Every state and other territories require that knackeries, butcher shops, animal food processing plants and meat processing plants hold an eligible licence with the state's and territory's food authority. There are requirements concerning labelling and auditing of pet meat and testing of pet meat for chemicals.

Our analysis of pet meat laws led us to the conclusion that Queensland's pet meat laws encourage appropriate labelling of pet meat and that the other Australian states and territories should adopt these laws. We are of the view that Tasmanian pet meat laws' requirement of annual testing should be adopted.

At present, there are no laws that regulate the manufacturing and marketing of pet food in Australia. Australian Consumer Laws do provide some form of legal recourse where section 3 of the Australian Consumer Laws, pet food may be considered as a consumer good, and the pet owner may be considered as a consumer. Therefore, if the manufacturer of pet food makes false or misleading statements or engages in misleading or deceptive conduct, then the pet food owner may take action against the pet food manufacturer under that consumer law.

To date, the current laws are not enough to protect pets and pet owners from unscrupulous pet food manufacturers. The current regulatory system does not encourage reporting of pet food-related incidents by pet owners.

There have been propositions that Australian Consumer Laws or the Food Standards Australia and New Zealand Act 1991 should be amended to regulate the pet food industry in Australia. As this is the case, there have been calls to make the Australian Standards **AS 5812:2017** freely available or mandatory. Note: if it was mandatory some parts of the standard would become freely available.

Our review and research of the current Australian Consumer Law and Food Standards Australia and New Zealand Act 1991 has lead us to the conclusion that amending the Food Standards Australia and New Zealand Act 1991 to regulate the Australian Pet Food Industry would be the most appropriate option.

The Australian Consumer Law can be amended to include pet food regulation within the scope of ACCC. The ACCC does not have the requisite technical expertise to regulate the pet food industry. The ACCC does not control the manufacturing and marketing of human food in Australia. The Food Standards Code is developed by the Food Standards Australia New Zealand and is monitored and enforced in Australia by authorities in the states and territories. The Food Standards Australia New Zealand body coordinates and monitors food in Australia. Therefore, amending the Australian Consumer Law is not suggested.

On the other hand, the insertion of pet food into the Food Standards Code is plausible. The process and format are entirely transferrable. The purchasers of both human and pet food are not different, and both human and pet food are sold in the same space. Consumers make the purchase decision based on ingredients, labelling, nutritional value and the like. As such, with regards to practicability, it makes more sense to amend the Food Standards Australia and New Zealand Act 1991 rather than amend the Australian Consumer Law.

The pet food requirements can apply to Australia only and thus remove the need to seek approval from New Zealand. Government health bodies at state and territory level would then be tasked with regulating pet food. We also recommend that organisations such as AUS-MEAT should be considered for auditing pet food at regular intervals.

Regarding the Australian Standards AS 5812:2017, we are of the view that it is difficult to make them freely available. If the Australian Government funds the development of one standard, then the Government may be compelled to support the development of other standards, incurring a substantial cost.

We recommend considering licencing arrangements with Standard Australia to distribute the standard AS 5812:2017 freely.

If mandatory standards for pet food are introduced in Australia, then those standards will be based on parts of the voluntary standard AS 5812:2017. Pet Food manufacturers will still be required to purchase the voluntary standard to access the remaining sections of the voluntary standards. This option may not be ideal.

Finally, if the Food Standards Australia and New Zealand Act 1991 is amended to include pet food, then that amendment will cover labelling, marketing and manufacturing standards. The need for making the Australian Standards 5812:2017 freely available may cease to be a concern.

Overall, amending the Food Standards Australia and New Zealand Act 1991 would be the most pragmatic option for the pet food industry in Australia.

2. The Senate Inquiry

The Senate Inquiry is titled ‘Regulatory Approaches to Ensure the Safety of Pet Food’ (the **Inquiry**) and was reported on 16 October 2018.

The Inquiry explores the transparent and effective regulation of the pet food industry, including the manufacturing, marketing, and supply of pet food. More specifically it makes reference to:

- (a) the uptake, compliance and efficacy of the Australian Standard for the Manufacturing & Marketing of Pet Food (AS 5812:2017) (**the Australian Standard**);
- (b) the labelling and nutritional requirements for domestically manufactured pet food;
- (c) the management, efficacy and promotion of the AVA-PFIAA administered PetFAST tracking system;
- (d) the feasibility of an independent body to regulate pet food standards, or an extension of Food Standards Australia New Zealand’s remit;
- (e) the voluntary and/or mandatory recall framework of pet food products;
- (f) the interaction of state, territory and federal legislation;
- (g) comparisons with international approaches to the regulation of pet food; and
- (h) any other related matters.

In our view, the Inquiry is very comprehensive and well-researched but the Inquiry does not look into what the dietary recommendations are for pets as this is out of its scope.

The Reasons Behind the Inquiry

The Inquiry was written in response to recent developments regarding the safety of pet food in Australia. This prompted the Minister for Agriculture and Water Resources, the Hon David Littleproud MP, to write to the Australian States and Territories asking them to support an independent review into the safety and regulation of pet food.

The Inquiry stemmed from several recent incidents where the safety of pet food was compromised and resulted in a number of medical issues for pets. These included megaesophagus, incidents relating to thiamine deficiency, irradiation, kidney disease, and the chemical and physical contamination of pet foods with foreign objects. Further, there were also chemical contamination and toxicity concerns where plastic had been found in pet food.

The PFIAA is a key player in the pet food industry. PFIAA has been operating in Australia since 1972 and has welcomed the Senate Inquiry into pet foods.

In their media statement dated 21 June 2018, Duncan Hall, the Executive Office of PFIAA stated:

“We consider that the proposal for the parliamentary enquiry and the leadership shown by both the Department of Agriculture and Water Resources and Senator Griff, is timely, appropriate and welcome”

On 29 August 2018, all States and Territories confirmed that a review was needed to address these legitimate concerns.

3. Review the Senate inquiry recommendations on regulatory approaches to ensure the safety of pet food and to protect consumer's rights.

Recommendations made by the committee in the Senate Inquiry

The committee made the following seven recommendations following the Inquiry:

- 1. The committee recommends that the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017) be made publicly available on the Department of Agriculture and Water Resources' website for download and distribution.*
- 2. The committee recommends that, as part of its review into the safety and regulation of pet food, the working group focus on mechanisms to mandate pet food standards and labelling requirements in Australia. In particular, it should give serious consideration to amending the Food Standards Australia New Zealand Act 1991 to expand the responsibilities of Food Standards Australia New Zealand (FSANZ) to include pet food standards and labelling requirements. The committee further recommends that the working group draft a national pet food manufacturing and safety policy framework for the consideration and endorsement of an appropriate forum such as the Australia and New Zealand Ministerial Forum on Food Regulation. To inform its deliberations, the committee recommends that the working group take into account the evidence provided to this inquiry.*
- 3. The committee recommends that the independent review working group identify specific measures to improve the efficacy of the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017). These measures should include specific requirements with regard to feeding trials and other testing prior to pet food sale as well as mandatory labelling standards that detail all ingredients including preservatives, additives, and which disclose heat, irradiation or other treatments to the product.*
- 4. The committee recommends that the Australian Competition and Consumer Commission review the process by which the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017) could become a mandatory standard under Australian Consumer Law and make public its review findings and any recommendations.*
- 5. The committee recommends that the Australian Veterinary Association, in cooperation with the Australian Competition and Consumer Commission explore measures to improve data capture in the PetFAST system.*
- 6. The committee recommends that the Australian Competition and Consumer Commission establish a system for consumer reporting on its Product Safety Australia website, to enable members of the public to lodge complaints and concerns associated with pet food.*
- 7. The committee recommends that the Australian Government work with the states and territories to establish a mechanism to investigate adverse pet food events and develop a complementary education campaign to raise awareness of the adverse pet food reporting, investigation and recall regime.*

We have provided our views on each recommendation below.

We have also made references to areas in this Final Report that provide a more extensive discussion on a specific point.

Reviewing Recommendation 1

Standards Australia invests significant resources and time in the development and/or revision of standards, and they own copyright in them. The only way for Standards Australia to recover the expenses spent on developing or revising a standard and to exploit the copyright is by selling the standards at a profitable price.

It would be not in the best interests of Standards Australia to allow free distribution of the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017) via the Department of Agriculture and Water Resources' website. The Department could potentially negotiate a licence with Standards Australia and offer the Australian Standard 5812:2018 at an affordable price.

However, if the Food Standards Australia and New Zealand Act 1991 is amended to include pet food, then the need for making the Australian Standards 5812:2017 freely available may cease to be a concern.

For further details please see our views of the feasibility of this recommendation on pages 27 and 28.

Reviewing Recommendation 2

It may not be difficult to expand the FSANZ to include pet food standards and labelling requirements. The insertion of pet food into the Food Standards Code is plausible. The process and format are entirely transferrable. The purchasers of both human and pet food are not different, and both human and pet food are sold in the same space. Consumers make the purchase decision based on ingredients, labelling, nutritional value and the like.

As per their website, FSANZ welcomes submissions and proposals to change the Food Standards Code¹. PFIAA and the Australian Veterinary Association (AVA) could consider making a joint and formal submission to FSANZ, outlining the deficiencies in the current Australian legislative framework on pet food. This could include a submission on its inadequacy in providing a unified voice to consumers, who are not being adequately informed of their purchases.

While FSANZ is not a strict regulatory body, this should be contrasted to the framework of the Food and Drug Administration (FDA) in the United States and how the FDA seeks to keep consumers well-informed on all types of food, including pet food.

We remain of the view that changing the Food Standards Code and subsequently amending the *Food Standards Australia New Zealand Act 1991* is necessary.

It is worthwhile amending the Food Standards Australia New Zealand Act 1991 than amending the Australian Consumer Law. We have set out the reasons for this view below.

The Australian Consumer Law (ACL) defines consumer goods as:

¹ <http://www.foodstandards.gov.au/code/changes/Pages/default.aspx>.

“goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption...”

and, according to section 3 of the Australian Consumer Law, a consumer is:

“a person is taken to have acquired particular goods as a consumer if, and only if ... the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption...”

Under the Australian Consumer Law, the pet owner may be considered as a consumer, and the pet food they purchased could arguably be considered as consumer goods.

Section 18 of the ACL states that a person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive.

Section 29(1) prohibits a person, in trade or commerce, in connection with the supply or possible supply of goods or services, from making various false or misleading statements. These include false or misleading representations that goods (including pet food) are of a standard, quality, value or grade.

This means that a consumer can take a pet food manufacturer to court if they mislead or deceive consumers about their product or make false representations, but the reality is that this would be costly and time-consuming and not a practical option. It is also not the most logical redress in relation to the quality of the food as it focusses on the manufacture's representations.

Under the ACL, consumer guarantees may automatically apply to the pet food. These guarantees require that the pet food will be of acceptable quality, fit for a particular purpose, and match its description. If a pet food manufacturer breaches any of the consumer guarantees, then a pet owner may be able to take legal action against them. In reality, this does not happen very often. Sometimes people can call 'consumer affairs' or 'fair trading' to get information about their rights and options. They may also be able to help negotiate a resolution between the person complaining and the seller. A consumer may also be entitled to take their complaint to their local small claim's tribunal.

The ACCC

The ACCC regulates competition and fair trading in the marketplace for the benefit of Australian businesses and consumers. It aims to prevent misleading or deceptive behaviour and minimise the risk posed by unsafe consumer goods.

The ACCC does not act alone to warrant that the consumer goods work safely in the Australian marketplace. It requires cooperation from consumers, suppliers and government agencies and support from specialised government bodies for specific types of products such as foods, agriculture, boats and cars to monitor and regulate the safety of consumer goods. ACCC does not have the required technical and commercial skills to monitor every product in the Australian marketplace.

We wish to highlight that in Australia, the ACCC does not regulate food for human consumption. Compliance with the Food Standards Code is monitored by each state and territory Department of Health. We are of the view that ACCC may not have the resources or know-how to regulate food for animal consumption in Australia.

Mr Neville Matthew from Consumer Product Safety (ACCC) in his letter dated 17 December 2018 (Appendix A) stated that the ACCC does not have the required technical, veterinary, nutritional, or food safety knowledge or expertise needed to undertake the duties of a pet food regulator. He said that the ACCC identifies risks relating to unsafe consumer goods and that such goods relate to personal, domestic and household use – in other words NOT pets. Further, the ACCC’s product safety network does not apply to pets.

Mr Matthew’s commented that the Australian Consumer Law should not be amended to bring pet food regulation under the ACCC.

We are of the view that the Food Standards Australia and New Zealand Act 1991 should be amended to include pet food within the Food Standards Code. Amending this food Act may be the easiest way to go. The reasons for this are set out below.

The format and process of integrating Australian Standard AS5812:2017 into the Food Standards Code are negotiable. Pet food can be regulated by the same regulators that currently regulate human food. The current infrastructure and system at Food Standards Australia New Zealand would support inclusion of pet food under the banner of the Food Standards Code.

Government Health departments of States and Territories that currently govern human food can also monitor pet food. There will not be a need for several changes to the Food Standards Code. Secondly, pet food is sold in the same space as human food. Consumers purchasing pet food look for the same things that they look for in human food. This includes but is not limited to ingredients, nutritional information, marketing claims and primary production process.

New Zealand does not need to increase the scope of the Food Standards Code to cover pet food labelling in New Zealand. Chapters 3 and 4 of the Food Standards Code apply to Australia only. Therefore, any pet food standards can be made applicable to Australia only by inclusion in Chapters 3 and 4.

Overall, we are of the view that Food Standards Australia and New Zealand Act 1991 and the corresponding state and territory legislation should be amended to include pet food within the current regime of the Food Standards Code. It would be much more practicable than changing the Australian Consumer Law or asking the ACCC to monitor and regulate pet food.

Reviewing Recommendation 3

We agree with recommendation 3 that *“the independent review working group identify specific measures to improve the efficacy of the Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017). These measures should include specific requirements with regard to feeding trials and other testing prior to pet food sale as well as mandatory labelling standards that detail all ingredients including preservatives, additives, and which disclose heat, irradiation or other treatments to the product.”*

From our point of view, the following information should appear on a pet food label:

- Product name
- The words PET FOOD ONLY – NOT FOR HUMAN CONSUMPTION (in capitals and bold font)
- Ingredients listed in descending order by weight
- Nutrition information label
- Guaranteed analysis (minimum percentage of crude protein and crude fat as well as the maximum percentage of crude fibre and moisture)

- Calorie statement
- Maximum or minimum levels of nutrients such as protein, fat etc
- Moisture levels in pet food
- Feeding directions
- Weights and measurements statement e.g. Net Weight: 500 grams
- How the product needs to be stored
- How the product needs to be served e.g. serve at room temperature away from sunlight
- Manufacturer's name and address
- Country of origin for ingredients (while the manufacturer could be local, but meat may be sourced from an unreliable) place This is not dissimilar to the requirements for the Food Standards Code.)

We are also of the opinion that the pet food manufacturers should be audited and accredited for AS 5812:2017. We are of the view that AUS-MEAT conducts the auditing.

AUS-MEAT is a not-for-profit agribusiness auditing, certification and training provider. AUS-MEAT serves every Australian state and territory. The way it works is that it currently provides certification in the areas of horticulture and meat and they are engaged by PFIAA to provide certification on Australian Standard 5812/2017.

AUS-MEAT can provide auditing and certification services. According to the AUS-MEAT website, PFIAA has engaged AUS-MEAT Limited to provide the management of its audit program and auditing of participants within the program to AS 5812:2017 Manufacturing and marketing of Pet Food.

Given its existing experience in auditing and certification for the Pet Food Standard, this body seems appropriate as the auditor should the Pet Food Standard become mandatory (but with some more resources allocated to it). All its auditors are Exemplar Global registered which means that the auditors are themselves individually certified by Exemplar Global. For context, Exemplar Global runs global personnel certification programs cover many popular management systems such as quality, safety, environmental, IT, responsible care, medical device, and food safety systems.

AUS-MEAT, as the provider of auditing and certification services, also supports the PFIAA which is a further reason to use them.

AUS-MEAT is also currently the only body approved for auditing that standard.

In preparing this report, we have not had any formal permission to get AUS-MEAT's support for the suggestion. AUS-MEAT has stated (to us) that:

"We do not have an issue with the wording being put forward, as long as it is stating that AUS-MEAT is not granting permission nor supporting the suggestion formally".

There is room to explore this option further.

Reviewing Recommendation 4

In order for the Australian Standard to become mandatory, in a general sense, the Australian Government must be provided with what is known as an Australian Regulation Impact Statement (**RIS**) which allows them to better consider whether regulations should be introduced.

This can be a lengthy process and it is the policy-makers that are responsible for putting together the RIS for the Government's consideration. If a decision is made, the final RIS is generally made public, along with comments from the decision makers.

Within the pet food context, introducing a mandatory safety standard would be quite difficult as it goes against the principles underpinning the Australian Consumer Law (ACL) and the role of the ACCC in minimising the risk of unsafe goods to consumers, including from injury or death.

The Australian Standard, therefore, would be very difficult to be made mandatory and potentially would not fall under the ACL as the ACCC has made it clear that the ACL's consumer product safety regime is intended to consider the safety of people, not animals.

Reviewing Recommendation 5

The role of the ACCC is to enforce the *Competition and Consumer Act 2010* and a range of additional legislation. The ACCC has made it clear that it does not support this recommendation and that the ACCC is not the appropriate body to receive consumer reports about pet food safety or to assist in improving the PetFAST system.

This would be a recommendation that would be difficult to implement due to the fact that the ACCC simply do not have the expertise in the area of regulating animal products to take on a role in pet food safety regulation and data collection.

Reviewing Recommendation 6

As noted above, the ACCC is arguably not the appropriate body to receive pet food safety complaints as their role primarily is to ensure that consumers can confidently participate in markets. The ACCC's product safety responsibilities involve identifying and addressing the risk of severe injury and death from safety hazards in consumer products. They achieve this by administering the consumer product safety provisions of the ACL, which include powers to issue compulsory recalls, product bans, mandatory standards and safety warning notices. Notably, these powers relate to natural persons and would not extend to pets.

If the ACCC was to include pet food as part of consumer complaints, this would go against its role. Its role is generally to identify risks to *persons* arising from unsafe consumer goods.

We, therefore, do not recommend that the ACCC regulate the safety of pet food particularly since the ACCC has declined to take on this responsibility deeming it to be outside its scope (on the basis that its scope is solely products consumed by *humans*).

Accordingly, we believe that it would be more appropriate for the Pet Food Standard to be incorporated into **Chapters and 4** of the **FSANZ Act 1991** and enforced by States and Territories that regulate food for human's consumption under their respective health departments. The health departments should expand their scope to cover pet food as this addition aligns to what they are already doing.

To that end, legislation in each jurisdiction would need to be enacted to increase the scope to cover pet food or remove exclusions over pet food.

Reviewing Recommendation 7

Should an independent regulatory body be established, it would need to provide awareness and education not only of the Australian Standard, but also of the reporting of any public safety concerns with pet food.

4. Describe current legislation and regulatory process covering the production and sale of pet food in Australia, including the rights of consumers and the mechanisms available for recourse for pet food incidents.

Overview of the legislation in Australia

There are legislative rules in Australia on how pet meat used as pet food is to be regulated. The legislation differs in each jurisdiction.

There are no specific laws governing the manufacture and labelling of pet food such as retorted, dry, freeze dried, etc for cats and dogs. Further, there is no express mechanism which gives legal recourse to consumers for pet food incidents. Nor are there appropriate remedies if a pet food incident results in death or sickness of a pet.

The Australian Consumer Law does apply to commercially manufactured pet food. The product safety framework does not apply to regulate the safety of pet food, this does not preclude a consumer from seeking an individual remedy under the consumer guarantees.

Australian State and Territory Legislation for pet meat used as pet food

Below is an overview of the key pieces of legislation that apply relevantly to pet meat used as pet food in each Australian State and Territory.

There is a common requirement across all States and Territories to label raw pet meat used as pet food as 'unfit for human consumption'. There is no requirement for manufactured pet food to contain a reference to being 'unfit for human consumption'.

A table comparing all States' and Territories' requirements for pet meat used as pet food is set out in **Appendix B** of this report

Victoria

In Victoria, the following two Acts apply:

- *Meat Industry Act 1993* (Vic); and
- *Meat Industry Regulations 2015* (Vic).

One of the main purposes of the *Meat Industry Act 1993* (Vic) is to set standards for meat production for human consumption and pet food. The legislation seeks to achieve this by implementing bans on the sale of certain pet food that has not been certified for consumption, or inspected, or has not complied with regulations required by law.

While the *Meat Industry Regulations 2015* (Vic) covers meat for human consumption, its purpose is also to prescribe requirements for the labelling of packaged pet food containing meat. It establishes requirements for labelling pet food as 'Pet Food Only' with an image of a whole body, head of a cat or dog.

New South Wales

In New South Wales, the following Acts apply:

- *Food Act 2003* (NSW); and
- *Food Regulation 2015* (NSW).

The *Food Act 2003* (NSW) prescribes what it refers to as “food safety schemes” that applies to food for human consumption and animal consumption. This scheme sets out rules, namely on handling the sale of food, labelling, regulating temperatures for food storage and taking samples.

The *Food Regulation 2015* (NSW) seeks to promote compliance with adherence to the pet meat standards, including standards for animal food processing plants as well as general operational hygiene requirements.

Queensland

The State agency, Safe Food Production Queensland regulates the following legislation:

- *Food Production (Safety) Act 2000* (Qld)
- *Food Production (Safety) Regulation 2014* (Qld)

The purpose of the *Food Production (Safety) Act 2000* (Qld) is to ensure the production of primary produce (including food for animal consumption) is carried out in a way that makes the primary produce fit for animal consumption and maintains food quality.

In the *Food Production (Safety) Regulation 2014* (Qld), within the Food Safety Scheme for Meat and Meat Products, there is a requirement that all meat products (including meat intended for animal consumption) must be handled and processed to a human consumption standard.

Tasmania

In Tasmania, the following legislation makes reference to pet food products:

- *Meat Hygiene Act 1985* (Tas);
- *Meat Hygiene Regulations 2003* (Tas);
- *Tasmanian Code of Practice for Hygienic Production of Pet Food 2003* (Tas); and
- *Primary Produce Safety (Pet Food) Regulations 2014*.

The *Meat Hygiene Act 1985* (Tas) and *Meat Hygiene Regulations 2003* (Tas) regulate the importation and domestic production of pet food sold in Australia.

The *Meat Hygiene Act 1985* covers licenses for pet food operators and the power to conduct inspections of the premises.

The *Meat Hygiene Regulations 2003* has adopted a variety of standards into its legislation. This makes it mandatory for licensed meat premises to comply with rules with respect to hygiene.

It also addresses pet food directly in Division 3, providing that the *Tasmanian Code of Practice for Hygienic Production of Pet Food 2003* (Tas) applies to licensed food works ranging from hygiene, transport, production, and packaging of pet food.

The *Primary Produce Safety (Pet Food) Regulations 2014* stipulates a requirement for pet food producers to be accredited. By becoming an accredited producer, the producer must then

comply with relevant standards and implement an approved food safety program that is audited at least once a year.

In summary, these pieces of legislation and regulations in Tasmania provide rules on ensuring proper hygiene of the meat premises, rules on the pet food operators and requiring producers to be licensed. There is nothing on consumer rights and mechanisms for recourse in the event of a food incident after the pet food has been produced and distributed for consumer sale.

South Australia

In South Australia, the relevant legislation is the *Primary Produce (Food Safety Schemes) Act 2004* (SA). Overall, the legislation ensures that pet meat used as pet food must be suitable for pet consumption.

This standard is lower than what is required for food that is suitable for human consumption.

The purpose of the *Primary Produce (Food Safety Schemes) Act 2004* (SA) is set out in section 9. Its object is to develop food safety schemes for primary industries that reduce risks to consumers and primary industry markets associated with unsafe or unsuitable primary produce.

The legislation requires meat sold for consumption by pets to have been produced by accredited producers and food safety schemes to be implemented. Notably, there is no mention of consumer rights in the legislation.

Western Australia

In Western Australia, manufactured and distributed pet meat is produced and processed under lower standards than the standards for food that is for human consumption.

The *Food Regulations 2009* (WA) applies to pet food products. The regulation prescribes how pet meat is to be stained, packaged, processed and the sale of pet meat to prevent it from being used for human consumption.

Section 33 of the *Food Regulations 2009* (WA) applies to pet meat sold by food businesses to be packaged. More specifically, it needs to be sold in pet food packaging that is not damaged, is made of an impervious material, and is sealed in such a way that the package cannot be opened and resealed without it being evident that the package has been opened and resealed and liquid cannot escape from the package.

Under sections 29 – 32, there is a requirement for pet meat to be stained (generally with blue dye). This is so that the meat cannot be, either intentionally or by accident, mistaken for meat destined for human consumption. However, the dyeing of pet meat does not apply to pet food that is heat sterilized or has been thoroughly frozen and is intended to be heated.

This law does not apply to pet meat produced at animal food processing premises if, immediately after the dressing of the animal from which the pet meat is produced, the pet meat is placed in a closed package that complies with the requirements for a closed package.

Pet meat is to be stained with a blue dye made from a substance listed within the Act after the dressing of the animal from which the pet meat is produced and in such a manner that the staining remains visible if the pet meat is broken up for sale.

Section 30 of the regulations requires that pet meat sold at premises should be subjected to an approved heat treatment process or stained.

Pet meat sold in a closed package should prominently display the words “Pet Meat – Not for Human Consumption” in letters not less than 5 mm in height.

Unpackaged pet meat must be stored in a container at animal food processing premises and retail meat shop. The container must display in the case of animal food processing premises — the address of the premises and the name of the business conducted at those premises; and in the case of a retail pet meat shop - the address of the animal food processing premises from which the pet meat was supplied and the name of the business conducted at those premises; and in either case - “Pet Meat – Not for Human Consumption” in letters not less than 10 mm in height.

Northern Territory

In the Northern Territory, the relevant legislation does not explicitly deal with pet food products although, the following legislation does ensure that pet food is not made from meat that is sourced from unhealthy animals:

- *Meat Industries Act 1996* (NT); and
- *Meat Industries Regulations 2002* (NT).

Australian Capital Territory (ACT)

In the ACT, there is no legislation in relation to pet food products.

Please refer to **Appendix A** for a table comparing each state’s and territory’s requirements for pet meat that is used as pet food.

Summary of the Legislative Framework for pet meat used as pet food in Australia

To summarise, the current state and territory legislation in Australia covers:

- production and distribution of pet meat used as pet food;
- labelling of pet meat used as pet food prepared for retail sale;
- licensing and accreditation of pet meat used as pet food producers; and
- importation of pet food.

The Australian Consumer Law

The Australian Consumer Law (ACL) applies across Australia in all States and Territories, it is relevant for all Australian businesses regardless of type of industry. The ACL is contained in Schedule 2 of the *Competition and Consumer Act 2010*.

Under the ACL, suppliers of consumer goods and related services are required to report deaths, serious injuries or illnesses associated with consumer goods. This requirement is known as mandatory reporting. This obligation is far reaching and extends to, amongst others, retailers, distributors, importers, manufacturers and/or exporter of the consumer goods in question.

If a product sold in Australia presents a safety risk or is non-compliant with a mandatory standard, the product can be recalled.

The ACL provides authority to the relevant Minister to order a compulsory recall of a consumer good if:

- a mandatory standard is not met; or
- a supplier has not taken satisfactory action to prevent those goods causing injury to any person.

The product safety framework does not apply to regulate the safety of pet food, however, this does not preclude a consumer from seeking an individual remedy under the consumer guarantees

If a pet is injured or poisoned when a pet food product is mouldy or contaminated, this may not grant the relevant Minister authority to issue a recall when the injury is not to a person.

The ACL also has prohibitions for false or misleading conduct. This includes prohibiting misleading statements made on pet food labels and false advertising and consumer guarantees.

The consumer guarantees contained in the ACL are broad and they apply to any product in any industry. The consumer guarantee that consumer goods be fit for purpose is not a provision that attracts penalties for non-compliance. It provides consumers with an individual right to claim a remedy if the guarantee is not met (e.g. refund, repair, replacement or compensation). The onus in this instance is on consumers to satisfy the requirement that the product did not meet the legal requirements set out in the consumer guarantees.

Overview of the voluntary standards in Australia

In Australia, there are no laws regulating commercially manufactured pet food. However, there are voluntary standards that manufacturers of pet food can adopt.

The introduction of a voluntary Australian Standard for pet food manufacturing and marketing was introduced in March 2011.

This standard is administered by the PFIAA in co-operation with the Department of Agriculture (DA).

The Australian Standard is a key element of the regulatory mechanism for pet food safety in Australia. However, in our view, and, as reflected in numerous submissions to the Government, the failing of the Standard is that it is voluntary.

In Australia, there is State and Federal legislation that aims to regulate pet food safety. These vary depending on the jurisdiction although the current legislation does not explicitly have jurisdiction over all aspects of pet food.

Voluntary standards in Australia

Below is an overview of each aspect of the voluntary standards in Australia that aims to promote the safety of pet food to Australian purchasers and their pets.

There are voluntary standards that operate separately to the legislative framework that seek to ensure the safe production of pet food.

The three standards in Australia in relation to pet food safety are:

1. Manufacturing and marketing of pet food (AS 5812:2017);
2. Hygienic Production of Pet Meat (AS 4814:2006);
3. Hygienic rendering of animal products (AS 5008:2007).

1. Manufacturing and marketing of pet food (AS 5812:2017);

In Australia, there are currently no national regulatory frameworks to control the domestic manufacture or importation of pet food.

The pet food industry in Australia is self-regulated with the Australian Standard for the Manufacturing and Marketing of Pet Food (AS 5812-2017) forming a set of voluntary industry standards. Originally it was introduced in March 2011 but was reissued in 2017 as AS5812:2017 following a review by Standards Australia.

The Standard is available via the SAI Global website. A fee applies.

According to the Inquiry, many of the submitters to the inquiry were not even aware of the existence of the Standard or its contents.

Pet food manufacturers wishing to comply and receive accreditation under the standard must undergo assessments conducted by an independent and qualified auditor although somewhat significantly, this is not mandatory.

We consider that the level of incidents that relate to pet food would be reduced if there was more compliance with the Australian Standard.

We recommend that there should be more cost-effective options to increase compliance with the Standard. Cost-effective options would include incentive-based regulation (a system of rewards and penalties) where incentives are given to people (such as them being publicly awarded). The Australian Energy Regulator has a Customer Service Incentive Scheme in place. The scheme rewards distributors for improving customer service and penalises distributors for poor customer service. This needs to be explored in more detail in its potential application to compliance with pet food laws. Education programs may also be useful. The Department of Education is responsible for national policies and programs that help Australians gain access to information about education so that **would not be suitable** but the PFIAA and FSANZ could produce materials to educate pet food manufactures. CHOICE, an independent consumer advocacy group, provides information to consumers and has two magazines in which it can talk about the new laws as well.

The Australian Standard AS 5812-2017 applies to both domestic and imported manufactured pet food products and operates to ensure the sale of manufactured safe and nutritious pet foods.

In the Standard, it sets out its scope of operation as:

“[The] production of pet food, including pet meat from sourcing and receipt of ingredients to storage, processing (including heat treatment), packaging, labelling and

storage of production in order to assure its safety for pets. It also includes instructions for the uniform application of information provided on labels.”²

The following are the key requirements that are covered by the current Australian Standard:

(a) Manufacturing of pet food products

The Standard provides to pet food manufacturer’s instructions for management and production practices of pet food.

These include that pet food manufacturing companies must have documented quality assurance systems and Hazard Analysis Critical Control Point (HACCP) plan in accordance with the Codex Alimentarius Commission (CAC) which is an internationally recognised organisation that aims to protect the health of consumers and ensure fair practices in the food trade.

The Australian Standard also includes requirements for the building and construction of areas where pet food is being manufactured so that the premises and equipment are safe, hygienic and free from contamination. Further, the manufacturer must have cleaning and sanitising practices, pest control, sampling and testing as well as keeping records of products and having recall practices in place.

(b) Labelling

In the Standard, the labels of a pet food product must include the following (amongst other things):

- an accurate description of the flavour or purpose of the pet food;
- the main ingredients of the product and additives with percentages; and
- a mark with the illustration of the whole of the body, or head of a dog or a cat with the words ‘PET FOOD ONLY’ in clear legible print.

The label must also have a nutritional information panel with a statement of guaranteed or typical or average composition. It must also have each of the ingredients displayed in a clear, informative and consumer-friendly manner.

If there are additives in the product then they should be listed in accordance with FSANZ Food Standards Code number.

(c) Marketing

The Standards require that any advertising in relation to the pet food product should not contradict or negate any information that is on the packaging. The advertisement must also not be misleading or deceptive or disparaging of a competitor’s product.

(d) Nutrition

² Standards Australia, *Australian Standard for the Manufacturing and Marketing of Pet Food (AS5812:2017)*, September 2017, p. 4.

The Standard requires that pet food manufacturers ensure that the pet food product adheres to an international nutritional publication such as the AAFCO Official Publication or the FEDIAF Nutritional Guidelines.

(e) Adherence to the Australian Standard

As we know, the adherence to the Australian Standard is voluntary though strongly encouraged for PFIAA members.

2. Hygienic Production of Pet Meat (AS 4814:2006);

This Standard applies in the processing of all animals that are used in the production of pet meat whether fresh or frozen including wild animals killed in their natural environment.

The Standard contains the minimum requirements for harvesting, transportation, processing, identification, packaging and storage in a hygienic manner. These conditions aim to produce a safe and acceptable product.

The key elements of this standard include:

- Guidelines to pet food manufacturers to ensure that the premises where pet food is manufactured are safe and clean;
- Pet food manufacturers must comply with surveillance, sampling, monitoring and testing programs and record the tests conducted under these programs.;
- That raw pet food products must be sourced and handled in certain ways, this includes offal and non-offal raw material;
- The facilities and the premises where the production of pet food is done must be constructed to a particular standard, namely that the floors are to be durable and non-toxic to ensure the facilitation of hygienic processing of animals and to prevent contamination. These rules also extend to equipment used on the premises;
- Pet meat that is intended to be sold without being subjected to an approved heat treatment process shall be identified by staining with “Brilliant Blue FCF” which is a synthetic organic compound. This stain cannot be removed or attempted to be removed pursuant to this Standard;
- The pet meat is required to be labelled clearly. Pre-packaged pet meat for retail sale must be in a sealed package in order to keep pet meat separate from meat for human consumption and prevent the products from deteriorating.

3. Hygienic rendering of animal products (AS 5008:2007).

This Standard applies to all rendering premises operating in Australia as well as all products of rendering operations including but not limited to:

- meat meal;
- meat and bone meal;
- poultry meal;
- poultry by-product meal;
- feather meal;
- blood meal;
- tallow;
- poultry oil; and
- fish oil.

The key elements of this standard include:

- Management and production practices at rendering premises;
- The procedures and processes an operator must have in place for the production of safe rendered products. This includes a monitoring system, verification procedures and procedures for each stage of production.
- Requirements on construction, specifically the premises and equipment to ensure the safe and hygienic production of all produced materials.
- The requirements also set out guidelines on ventilation, cleaning facilities, construction of loading areas and the operation of vehicles to transport raw material.
- There are procedures on the processing of the products in order to manage the risks that could arise from contamination of the product.
- This includes operating under an approved arrangement that facilitates processes such as cleaning, packaging, storage, and pest control.
- In order to minimise the risk of microbiological contamination control, the standard sets out guidelines on validation processes and continual testing for any post-production contamination.
- Clear labelling is required for products containing restricted animal material with the following warning:
 - “This product contains restricted animal material – DO NOT FEED TO CATTLE, SHEEP, GOATS, DEER OR OTHER RUMINANTS.”
- Animal products that do not contain restricted animal material must be labelled as follows:
 - “This product does not contain restricted animal material.”
- A system must be put in place that operates to clearly identify the source of all raw materials and the traceability of rendered products.

5. Describe the management and operations of the Pet Food Adverse Event System of Tracking (PetFAST) established in 2011 by the Australian Veterinary Association (AVA) and Pet Food Industry Association of Australia (PFIAA).

According to the AVA website, PetFAST is a system for tracking health issues in dogs and cats that may be related with pet food, treats and pet meat. It is a system developed for identifying possible trends that may indicate the cause of health issues.³

Only veterinarians in Australia are allowed to submit a report to PetFAST. Veterinarians submit a detailed report to PetFAST's central portal.

If a pet owner is of the view that a particular pet food or treat is causing health issues in their pet, then they can ask their pet's vet to examine the pet and report the issue to PetFAST if the vet suspects that the health issue is associated with that particular pet food or treat.

AVA and PFIAA monitor the PetFAST reports for similarities that may indicate a possible problem. If they discover that a problem is affecting many pets, a joint committee will meet to discuss the next course of action.

Reports are also forwarded to the pet food manufacturer if possible. The AVA can then facilitate contact between the pet food manufacturer and the reporting veterinarians to investigate the matter further provided that the veterinarian has consented to be approached by the manufacturer.⁴

³ PetFast reporting available at <https://www.ava.com.au/library-resources/other-resources/petfast/>

⁴ AVA submission, "Regulatory approaches to ensure the safety of pet food" pgs. 4 – 5

6. Assess the effectiveness and use of PetFAST and, if required, make suggestions on how to improve it or other mechanisms which could be used for consumer complaints.

PetFAST is a successful initiative that has identified a series of adverse events to date. Because only veterinarians can submit a report to PetFAST, all the data obtained is relatively clean and of the highest quality. The PetFAST system's integrity and efficiency has preserved because of this practice.

The PetFAST mechanisms raise two main concerns. For one, it is voluntary meaning that it is never required for a veterinarian to make a report and further, many vets may not even be aware of the existence of this system.

Pet food manufacturers are also not under a legal obligation to recall pet food products if there has been a concern raised with the safety of their pet food. This then creates a break in the chain between issues raised with the safety of pet food products and this information being passed to the public.

PetFAST can do better if more funding is made available. They can use the funding for investigation of an issue once a problem is identified. We do not recommend that PetFAST accepts complaints directly from pet owners as this would affect the quality of data they are gathering and may not allow detection of possible patterns.

A system for mandatory recalls of pet food is required and for consumer complaints. This can be achieved by amending the Food Standards Australia New Zealand Act 1991. If this takes place, then Australian states and territories will have enforcement powers to mandate, order or force a recall if necessary. Further, consumers can submit a complaint with the local food enforcement contact if there is an issue with pet food.

7. Compare with other regulatory models/frameworks in Australia and overseas (e.g. New Zealand, Europe, Canada and North America) pertaining to the manufacture of pet food (see recommendation 3 - 7.16).

New Zealand

In New Zealand, there are enforceable pet food regulations that apply to all manufacturers of pet food, animal feed, and dietary supplements. Here, the onus is on the manufacturer to meet the requirements for oral nutritional compounds which are set out in the *Agricultural Compounds and Veterinary Medicines (ACVM) (Exemptions and Prohibited Substances) Regulations 2011*.

As in Australia, if a manufacturer makes a nutritional claim about a pet food product this must be factually substantiated. In some cases, the claim may be classified as a veterinary medicine and if so, may require formal registration. At the very minimum, if a manufacturer of pet food makes a nutritional claim then they must be able to prove these claims.

New Zealand also has a number of non-profit associations that operate in the pet food industry, namely the New Zealand Pet Food Manufacturers Association (NZPFMA). NZPFMA is an industry association which is similar to the Australian version of the Pet Food Industry Association of Australia.

NZPFMA is an association that is comprised of both manufacturers and companies that supply pet food products or related goods and services in the pet food manufacturing industry.

In New Zealand there are several pieces of legislation that govern the manufacturing of pet food. The two most relevant pieces of legislation include the *Agricultural Compounds and Veterinary Medicines Act 1996* and the *Animal Products Act 1999*.

The Agricultural Compounds and Veterinary Medicines Act 1996 (ACVM)

The ACVM sets out certain mandatory requirements for pet food products. These include:

- The pet food product is fit for the purpose. This means that the pet food product takes into determination the species, type and class of animal;
- The label must include:
 - the trader's name;
 - a list of ingredients in the product;
 - the directions for use;
 - the contact details of the person responsible for the product this is likely to be the manufacturer or marketer; and
 - the batch and date codes to enable traceability.

There are also requirements if the pet food would be required to be registered as a veterinary medicine.

The Animal Products Act 1999 (APA)

This legislation applies to pet food manufacturers who:

- are involved in slaughter and dressing of animals for pet food;

- produce products that require official assurances;
- process pet foods containing animal material that result from the death of an animal e.g. red meat, offal, poultry, fish), excluding rendered material.

This legislation also is aligned with the Risk Management Programme (**RMP**). Under this program, if an entity that processes or manufactures animal products, requires an RMP.

The purpose of the RMP is to manage the hazards, wholesomeness and labelling of animal material and products. This program aims to prevent issues with pet food arising and placing the onus on the manufacturer to create a safe environment to manufacture food products.

New Zealand – Recall Process

The Ministry for Primary Industries (**MPI**) is responsible for the administration and enforcement of food legislation in New Zealand. The process in which a food recall can be initiated in New Zealand varies with the applicable legislation the food business is administered under.

In terms of pet food, the power for the MPI to initiate a recall is entrenched in the APA. This power is mostly exercised when a business fails to act responsibly.

Under section 85 of the APA, the Director-General can issue a recall of animal material and animal product, while sections 90 and 91 provide statutory power to an animal product officer to condemn and require disposal of diseased or contaminated animal products, and the power to require presentation of live animals for testing purposes.

Food recalls can commence from consumers lodging complaints about a purchased product, manufacturers reporting a problem to MPI, or results from MPI's regulatory monitoring and surveillance.

New Zealand – Comparison

In our view the New Zealand model is more comprehensive than that of Australia's, namely due to the following factors:

- powers of recall by the appropriate government Minister;
- more uniform legislation; and
- the requirement for a Risk Management Scheme.

Canada

Canada is a largely voluntary system like Australia.

Whilst the responsibility of producing safe pet food products is on the manufacturer, there is no national recall system. Therefore, purchasers of pet food must rely on local pet retailers to warn about pet food product recalls.

As in Australia, there is a lack of timely information to consumers in relation to an issue with pet food. There is no overarching federal body that regulates pet food and provides a mechanism for reporting issues and product recalls.

The United States has the Food and Drug Administration (**FDA**), the equivalent in Canada is the Canadian Food Inspection Agency (**CFIA**). The CFIA does not have the authority to issue a recall if they are notified of an issue with a pet food product.

The CFIA also regulates imported pet food products. Since around half of Canada's pet food products are imported from the United States and the United States must follow strict requirements (which we will discuss below).

Like Australia, there is a voluntary organisation called the Pet Food Association of Canada (**PFAC**). The goal of PFAC is to encourage a commitment to the production of safe and nutritious products and promotes labelling and nutritional requirements. However, PFAC does not have any power over manufacturers.

PFAC supplies materials or services to the pet food manufacturing industry, including information on industry regulations and important labelling information. Should a manufacturer like to become a member of PFAC, they must meet strict standards in terms of nutrition, safety and labelling.

In becoming a member of PFAC, the member company manufactures to the nutritional standards set out by the American Association of Feed Control Officials (**AAFCO**).

The AAFCO is a voluntary membership association of local, State and Federal agencies charged by law to regulate the sale and distribution of animal feeds and animal drug remedies.

In Canada, the labelling and advertising of pet food is regulated by the *Consumer Packaging and Labelling Act* and the *Competition Act*. The *Consumer Packaging and Labelling Act* sets out mandatory requirements for pet food labelling, including:

- common or generic name: e.g. “Dog Food” or “Cat Food”;
- net weight: amount of product within the package, measured in metric units; and
- the manufacturer's or importer's contact information.

There exists a voluntary guideline for the advertising and labelling of pet food⁵, although it is considered to be an accepted standard in the pet food industry in Canada. This provides further labelling recommendations to complement the *Consumer Packaging and Labelling Act* including:

- the list of ingredients: listed in descending order by percentage of weight;
- feeding instructions;
- information on the minimum and maximum nutritional quantities. For example, the analysis will include the maximum or minimum percentage of protein, fat, fibre and moisture; and
- nutritional adequacy or intended life stage for which the food is suitable;

Canada – Recall Process

The CFIA is responsible for mitigating risks to food safety. Notably, as there is a lack of regulations on pet food, the CFIA do not have any recall authority regarding pet food and subsequently, there is no national recall mechanism. As a result, the onus and responsibility lie

⁵ “Guideline for the Advertising and Labelling of Pet Food” 21 September 2001

with the manufacturer of the product to warn consumers and to ensure appropriate and enough pet food safety and hygiene.

As an example, the CFIA's lack of power was mostly evident when the FDA had issued a recall on dog food brands in 2018, with one brand being distributed across Canada. Given that pet food is not a regulated commodity in Canada, the CFIA had no recall authority.

Canada – Comparison

As discussed above, the model in Canada largely reflects that of Australia in terms of the regulation of pet food being voluntary.

United States of America

There is strict regulation on all food products in the United States of America (USA), including pet food, and compliance must be met at a Federal and State level. The FDA oversees the regulation of finished food products and their ingredients.

The scope of the regulation covers strict labelling requirements regarding product names and ingredients. A pet food manufacturer using an ingredient in the product must first seek approval by the FDA to do so and subsequently have it adopted by the AAFCO.

In order for an ingredient to be deemed acceptable, there is Federal and State regulation on this issue. At a Federal level, there is the *Food Safety Modernization Act (FSMA)*, which is the most comprehensive update to USA food safety regulation in more than 70 years.

The FSMA created new requirements and mandatory product safety requirements for almost all pet food makers in the country. At a State level, pet food products are regulated under each State's laws, while noting that each State can adopt the AAFCO's manufacturing practices.

In the USA pet food is treated similarly to human food, making regulation more uniform across the board. There is also a link between State laws and AAFCO. The AAFCO is considered an international companion on animal nutrition organisations, providing guidelines on the dietary requirements of pets. This information is published annually in their Official Publication which makes it accessible to all purchasers of pet food.

The laws and regulations developed by the AAFCO are not directly enforceable due to the organization not being a government institution. The AAFCO operates as a source of information to the industry and its members seeking to achieve three goals:

- safeguarding the health of animals and humans;
- ensure consumer protection within the USA; and
- providing a level playing field of orderly commerce for the animal feed industry in the USA.

The organisation strives to achieve these goals by developing and implementing regulations, standards and laws regarding the manufacture, labelling, distribution and sale of animal feed.

United States – Recall Process

The FDA can either request a pet food recall or order a recall under statutory authority. Consumers can lodge a report about a pet food product either through an electronic (called the

Safety Reporting Portal) or make a complaint to their State's FDA Consumer Complaint Coordinators.

Upon receiving a complaint, the FDA either investigates the problem immediately (depending on the severity of the problem) or covers it during the next inspection of the facility responsible for the product.

The FDA can conduct extensive investigations regarding complained products which consist of laboratory reports, testing, and investigating retailers, wholesalers or the manufacturer of the product.

If the investigation reveals that the complained product causes illness, injury or death and that it is a widespread issue, the FDA can order a recall and release a public announcement to consumers not to use the product or to return it to the store.

Importantly, anyone can submit a report about a problem with a pet food and a consumer can make a report even if an animal is not affected by a suspected problem with a pet food.

United States - Comparison

We note the following differences between the USA and the Australian model:

- in Australia a person cannot report directly to a body like the FDA, instead only veterinarians can lodge a report through PetFAST;
- the FDA regulates all types of food, whereas in an Australian context the scope of FSANZ is limited to that of food for human consumption.

Europe

As in the USA with the AAFCO, Europe has the European Pet Food Industry Federation (**FEDIAF**). This is an international organisation that provides guidelines on the dietary requirements of pets in Europe.

The FEDIAF represents the pet food industry in 21 European countries through 16 national or regional pet food industry associations.

It seeks to operate as the voice for purchasers in the European pet food industry. It achieves this by bringing together authorities, regulators and academics to ensure the supply and production of safe pet food products.

The FEDIAF publishes nutritional guidelines and other standards that are recognised by the European Union and some non-member European Union nations.

8. Describe other similar Australian regulatory regimes that could be expanded to include pet food (e.g. the food regulation system) and detail any changes that would be required.

The Senate Inquiry suggested that the *Food Standards Australia New Zealand Act 1991* be amended to include pet food standards and labelling requirements. We are of the view that the Food Standards Australia New Zealand (FSANZ) could be expanded to include pet food standards and labelling requirements.

The way this would be initiated is that the Legislative and Governance Forum on Food Regulation (**Forum**) can request that the Food Regulation Standing Committee (**Committee**) develop Policy Guidelines. Generally, food policies are only developed where a significant problem has been identified. The Senate Inquiry has identified that regulatory approaches are required to ensure pet food safety, so this would arguably be classified as a significant problem.

If the Food Standards Code were to be amended to cover pet food, stakeholders (which have opportunities to give input) could include consumers, industry bodies, food manufacturers, importers and retailers, consumer advocacy organisations and government. FSANZ has an established, accountable, consultative and transparent approach to stakeholder engagement when developing food standards.

Next steps would be that a new pet food standard would be developed and then approved by the FSANZ Board as well as submitted to the Forum for consideration. (The Forum, in general, can ask FSANZ to review an approved food standard; and following a review can amend or reject the standard).

The Forum could then ask FSANZ to review the newly approved food standard and following a review, they can amend or reject the standard. This step would replace the normal Parliamentary debate that usually takes place when new laws are made.

Once the standard is accepted and finalised, it becomes law.

The new pet food standard would then become law and would be enforced by the States and Territories under their own laws and under the usual way all standards within the Food Standards Codes are treated.

It is worth mentioning that the Implementation Subcommittee for Food Regulation (ISFR) is a subcommittee of the Food Regulation Standing Committee. Its role is to develop and oversee a compatible approach with implementation and enforcement of food standards across and between jurisdictions. It develops and implements a nationally consistent approach to the implementation of food standards and regulations and consults with FSANZ.

New Zealand has the option of opting-out of a joint food standard and/or create a New Zealand only food standard.

It is possible to have an Australia only standards for pet food. Currently, chapters 3 and 4 of the Food Standards Code only apply to Australian food producers.⁶

⁶ Food regulation system available at <https://www1.health.gov.au/internet/publications/publishing.nsf/Content/foodsecretariat-stakeholder-engagement-toc-4>

There is one more option that has been raised by the ACCC in its feedback to our earlier reports, that is: a certification trade mark. A certification trade mark can help regulate the safety of pet food.

What is a certification mark?

A certification mark is essentially a registered intellectual property right that signifies the bearer of the trade mark has met an official standard (such as “Australian made”). The standards often associated with a certification mark include standards relating to quality, content, method of manufacture and origin of manufacture, amongst others. ACCC approval is required before such trade marks can be registered under the *Trade Marks Act 1995*.

Specifically, a certification trade mark’s rules must cover:

- the standards that goods or services must meet;
- the method for determining if the standards have been met;
- the requirements an approved certifier must meet;
- the requirements the owner of the certification trade mark, or an approved user, must meet;
- any other requirements for the use of the certification trade mark;
- the procedure for resolving a dispute about whether goods or services meet the certification standards; and
- the procedure for resolving any other issue regarding the certification trade mark.

While a certification mark is a form of trade mark that grants the owner several exclusive rights in relation to the trade mark, there are fundamental differences between certification marks and standard trade marks.

A certification mark is generally extensively licensed out by the owner, being the body that would own the trade mark, to third party manufacturers and service providers. These people need to comply with a set of rules or standards.

The purpose of a certification mark is to display to consumers that the item or service to which the certification mark is applied is of a standard. Common examples of certification marks include Glycaemic Index Foundation (used to identify food products that meet strict nutritional guidelines) and Victoria Farmers Market Association (used to show authentic farmer’s market products).

The ACCC considers various aspects of certification trade marks, including the effectiveness of the rules and the effect the certification scheme is likely to have. The ACCC is well within its right under the law to request certain changes to the rules before it approves them.

In terms of who would be the certifying body for a pet food certification mark, an entity could be established and be charged with the responsibility of administering the mark and also collecting the licence fees.

The public benefit of certification marks is that licensees of a certification have a range of obligations, as detailed in the code of practice relating to that mark.

Notably, certification would not be mandatory – it would exist for pet meat/food manufacturers who want to demonstrate to consumers that their products have undergone specific performance and quality assurance tests (indicated by the presence of the trade mark). This means that it would not apply to all pet food manufacturers.

This is a notable defect with the option of using a certification mark to regulate pet food/meat manufacturing. That said, it does have its merits, particularly if most pet food manufacturers or at least all the big manufacturers were to elect to become licensees.

9. Outline alternative regulatory and non-regulatory option(s) for Australia, including amendments to current legislation (if required).

In Australia, the pet food industry is self-regulated. However, there have been concerns that the framework is inadequate.⁷

The committee in their report have discussed the advantages and disadvantages of a co-regulation model and a comprehensive framework of government regulation in a bid to replace the current self-regulatory framework.

We agree with the comments in the report that it may take several years to implement either of the options and that that implementation would be complex.

Apart from the committee's recommendations, we recommend considering the option of goal-based regulation. Goal-based regulation can focus on a specific objective rather than mandating rules. For example, the pet food label should state the actual ingredients or methods of processing pet food.

We suggest considering one of the following non-regulatory options for Pet Food Industry.

Option 1: Incentive based regulation

We recommend that good behaviour such as comprehensive labelling by pet food manufacturers should be rewarded. Incentives could include either public praise or an award which can be used in upcoming marketing strategies.

Option 2: Education programmes

The report highlighted that the average consumer finds it difficult to read and understand the pet food label.⁸

We recommend that consideration be given to developing education programmes that ensure that the public is aware of the risks and benefits associated with pet food. Education programmes can also play a key role in creating awareness of the Australian Standard.

Option 3: Developing collaborative partnerships

The report highlighted that pet owners are unable to report pet food related incidents to PetFAST directly.⁹

⁷ Page 50 of The Senate "Rural and Regional Affairs and Transport References Committee" Regulatory approaches to ensure the safety of pet food, October 2018.

⁸ Page 48 of The Senate "Rural and Regional Affairs and Transport References Committee" Regulatory approaches to ensure the safety of pet food, October 2018.

⁹ Page 67 of The Senate "Rural and Regional Affairs and Transport References Committee" Regulatory approaches to ensure the safety of pet food, October 2018.

We recommend that consideration should be given to developing a collaborative partnership between PFIAA, AVA, government, citizen and consumer stakeholders.

Through this collaborative partnership, pet owners may be able to report pet food related incidents. A working model could be that labels include an emergency number for consumers to report any health-related problems associated with pet food. The emergency number should be overseen by PFIAA.

10. Make recommendations to strengthen Australia's system for regulation of pet food, including if compliance with the Australian Standard AS 5812:2017 should be made mandatory and how this would occur.

Mandatory standards ensure that the products that are available for purchase meet certain requirements. Mandatory standards can cover both the safety of the product and its labelling.

If the Australian Standard should be made mandatory, resulting in the Australian Standard falling under the ACL. As stated earlier, it would be a difficult option to achieve, as this goes against the role of the ACCC and the principles underpinning the ACL.

The ACCC's product safety responsibilities involve identifying and addressing the risk of severe injury and death from safety hazards in consumer products. They achieve this by administering the consumer product safety provisions of the ACL, which include powers to issue compulsory recalls, product bans, mandatory standards and safety warning notices.

Under the ACL, the Minister's powers are found in sections 104 and 105 of the ACL, where the Minister may:

- make a safety standard that sets out requirements that are reasonably necessary to prevent or reduce the risk of injury to a person; or
- declare a safety standard approved by Standards Australia or a prescribed association.

Notably, these powers relate to natural persons and would not extend to pets and thus the ACL does not expressly set out that it seeks to protect non-humans.

Despite these concerns, we have set out the steps below on what is required in order for a standard to become mandatory.

Before a mandatory standard is introduced, the Federal Government is required to accompany this proposal with an evaluation that allows for analysis and public scrutiny of the proposed regulatory changes. This is what is known as a Regulation Impact Statement (**RIS**) and must conform to a number of legislative requirements.

The Australian Government has outlined that every proposal that aims to introduce a regulation must be accompanied by an RIS. The RIS is a tool designed to encourage rigour, innovation and better policy outcomes from the beginning of the policy making process.

According to The Australian Government Guide to Regulation, the seven questions that an RIS should address are as follows:

1. What is the problem you are trying to solve?
2. Why is government action needed?
3. What policy options are you considering?
4. What is the likely net benefit of each option?
5. Who will you consult about these options and how will you consult them?
6. What is the best option from those you have considered?
7. How will you implement and evaluate your chosen option?

In order to implement a mandatory standard, the Federal Government must first conduct research and consult with industry and consumer representatives to develop an RIS for the

introduction of that standard. It is the policy-makers that write an RIS and it is mandatory for all Cabinet submissions. It is very rare to be exempt from writing an RIS. It is up to Policy Officers to consult with the Office of Best Practice Regulation (which administers Regulatory Impact Analysis requirements) to seek advice on whether an RIS should be prepared.

An RIS does not only apply to legislation, which is a common misconception, but in fact is required for all measures that seek to impose mandatory obligations on businesses and the community.

In general, the process for making the Australian Standard mandatory could look like this:

- a Policy Officer seeks advice from the Office of Best Practice Regulation (**OBPR**) regarding a potential RIS;
- a draft RIS is then sent to the OBPR;
- if the OBPR approves of the draft RIS it should be publicly released;
- consultation with affected stakeholders notifying them of the intention to adopt regulatory measures (and inviting submissions for the RIS);
- the RIS undergoes further development after its public release and the submissions received;
- prior to a decision made by the Ministerial Council, the OBPR conducts a final review of the RIS to ensure it meets certain requirements;
- the Ministerial Council makes a decision on whether to proceed with the regulatory action;
- OBPR and Ministerial Council comments are made publicly available; and
- after a decision is made, the final RIS is generally made public.

To provide a more practical example, in 2005 a RIS was prepared by the Department of Primary Industries to facilitate public consultation on the proposed Meat Industry Regulations 2005.

This proposed regulation was intended to supersede the current regulations and an RIS was required to support this proposal. In this RIS, it was proposed that an alternative to mandatory labelling of pet food in the proposed regulations would be to incorporate the requirement in the Food Standards Code.

It was also acknowledged that to achieve this, it would require a broadening of the scope of the *Food Act* and the Code as it only referred to food which was unfit for human consumption. Due to this issue, the RIS stated that for ease of implementation, food labelling should remain within the Meat Industry Regulations.

Recommendation

Thus, if you choose to consider preparing an RIS on making the proposed Standard mandatory, in our view it would be difficult to achieve this. The findings of the Senate Inquiry can aid in the preparation of the RIS. For instance, the finding that many submitters expressed concern that the pet food labels (in most States and Territories) do not contain a comprehensive description of the ingredients, by-products and heat treatments of the pet food can be included in the RIS.¹⁰

¹⁰ Page 48 of The Senate “Rural and Regional Affairs and Transport References Committee” Regulatory approaches to ensure the safety of pet food, October 2018.

11. Assess the options for making the Australian Standard AS 5812:2017 for manufacturing and marketing of pet food freely available to the public.

As of 3 July 2019, the Australian Standard is available for purchase on the Australian Standards website at a cost of approximately \$128.19.

The Rural and Regional Affairs and Transport References Committee has recommended in its report that the Australian Standard should be made publicly available on the Department of Agriculture and Water Resources' website for download and distribution.¹¹

We are of the view that it is necessary to gain an understanding of how standards are generally developed by Standards Australia and the costs it incurs in developing those standards. According to the Standards Australia website, standards are developed by technical committees whenever Standards Australia approves a proposal received from the public to develop or revise a standard.¹²

We understand that apart from engaging the technical committee, Standards Australia may also employ support staff to arrange meetings for the technical committees, to distribute documents and to carry out day-to-day tasks.

The standards developed may be subject to copyright protection.

The only way for Standards Australia to recover the expenses spent on developing or revising a standard and to exploit the copyright is by selling the standards at a profitable price.

We also understand that, at the time of writing this report, SAI Global has the monopoly over the distribution of documents that are developed by Standards Australia.

At the time of writing this report, SAI Global is offering specific Australian Standards for free.

A list of freely available standards can be found over here:

https://infostore.saiglobal.com/store/getpage.aspx?path=/publishing/shop/promotions/Free-Australian-Standards.htm&goback=.gde_3860935_member_103994445

Free access is for promotional purposes. The Standards that are free include topics such as polyethylene, geotextiles, cellular plastics and waste fillings to name a few.

SAI Global website states the following:

"N.B. Not all Standards are free, the PDF versions of Australian, BSI, ETSI and IEC Standards listed on the promotional pages are free. A limited range of Hardcopy versions are free. Hardcopy versions of Free Standards will incur a postage and handling charge. Free Standards will be listed as 'Free' on the product page of InfoStore."

Australian Standards can be made free to the public.

¹¹ Page 77 of The Senate "Rural and Regional Affairs and Transport References Committee" Regulatory approaches to ensure the safety of pet food, October 2018.

¹² FAQs "Developing Standards" available at <https://www.standards.org.au/faqs>

Firstly, the Australian Government can be lobbied to fund the development of Australian Standards.

Lobbyists can assist organisations and individuals in projecting their views on matters of public interest to the Government and opposition with the hope of achieving a positive outcome.

The drawback of this option is that the Government may consider that funding the development of one Standard may open flood gates for funding of the development of other Standards which can have a significant economic impact on the Government.

Another option is to have a licencing agreement in place with Standards Australia.

In the past, free onsite and offsite access to Australian standards was made available via membership of the National Library of Australia and the State Library. However, this free access was only for private research or study purposes.

In 2016, due to a breakdown in publishing negotiations between National and State Libraries Australasia and SAI Global, free access to Australian standards in public libraries was terminated.

Moving forward in December 2018, it was determined by an independent arbitrator that any extended distribution agreement between SAI Global and Standards Australia will be non-exclusive. In other words, Standards Australia will be able to contract with other organisations to distribute the standards.

Standards Australia may not be able to contract with other organisations until late this year or early 2020. Standards Australia is currently in the process of implementing the arbitrator's decision and the process may finish by the end of this year.

Considering the above, a partnership can be built with Standards Australia to make the pet food standard freely available to the public.

We understand from the submissions and the Senate inquiry report that a majority of the pet food manufacturers in Australia are members of PFIAA. PFIAA may consider developing a partnership with Standards Australia to make the Standards freely available. They may be able to recover some of the costs of licencing with Standards Australia through membership fees. We highlight that these are our views and not of the PFIAA.

Some of the considerations that need to be considered when negotiating with Standards Australia are:

- recovering costs of service provision,
- information updating,
- regulation of access to the standards (either online or offline);
- technology platform; and
- licencing fees, among other things.

We want to draw your attention to the fact that if the Food Standards Australia and New Zealand Act 1991 is amended then the labelling, marketing and manufacturing of pet food will be included with the Food Standards Code and the necessity for making Australian Standards 5812:2017 freely available may become obsolete.

12. Conclusion

Thank you for the opportunity to review the current pet food regulations in place in Australia.

Upon our review of the current systems and processes, we highly recommend amending the Food Standards Australia New Zealand 1991 Act to bring the regulation of pet food within the legal scope of the Food Standards Code. This amendment will also require Australian States and Territories to amend their respective legislation.

Bodies such as AUS-MEAT are recommended to conduct auditing of pet food. Government health departments at State and Territory level can regulate the safety of pet food and initiate recalls if required.

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