



Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Submission Re: Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill

This submission focuses on the amendments proposed in subsection 4(1) that would delete:

- The definition of a GMO; and
- The definition of a GM product.

1. Process: Inadequate Consultation

The treaty that established joint trans-Tasman food safety regulation requires under Article 4 that:

Australia shall not introduce any amendments to the Australian legislation establishing the Authority, or move government amendments to that legislation, without effective consultation with New Zealand during their development.

When the Sustainability Council enquired with the relevant New Zealand agency on the consultation achieved with respect to the removal of GMO related definitions, the following was stated:

The Australian Department of Health have consulted with MPI on the proposed changes. We can advise that Bill proposes to remove the definitions of “GMO” and “GM product” from the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act), **there is no intention to affect GM regulation.**

The Bill proposes to remove the definitions of “GMO” and “GM product” from the FSANZ Act as a consequence of amending the definition of “appropriate government agency” in the FSANZ Act. “GMO” and “GM product” are terms used solely for the purpose of prescribing when Food Standards Australia New Zealand (FSANZ) must provide notice of certain matters to the Gene Technology Regulator (GTR) under section 19 of the FSANZ Act, concerning food regulatory measures such as food standards. Due to the proposed new definition of “appropriate government agency”, the **definitions of “GMO” and “GM product” would be unnecessary.**¹ (Emphasis added)

We submit that while there may be “no intention to affect GM regulation”, that would indeed be the practical effect. We also requested copies of the relevant documents provided by Australian government counterparts which would have shown

¹ Ministry for Primary Industries, Email to Sustainability Council, 3 November 2015.

whether there was any consideration and/or assessment or potential effects on GM regulation, even if not an intent, but have yet to receive these. In absence of such papers and without an explanation in the explanatory note to the Bill, we are left with the impression that the potential for consequent impact on GM regulation was not considered and thus the consultation was inadequate for this reason.

2. Effect of the Removal of the Definitions

The definitions of gene technology and GMO in the FSANZ Act are currently the same as that in the Australian Gene Technology Act (see full definitions in footnote below).² These definitions appear to be wider in scope than the related definitions in the Food Standards Code (standard 1.5.2).³

There are a number of new genetic breeding techniques being developed that developers and other parties are advocating be deemed non-GM and removed from the scope of GM laws covering food safety and environmental release. The OGTR has confirmed that many of these new techniques would be regarded as GMOs for the purpose of the Gene Technology Act.⁴ This includes the technique called ODM (oligo-directed mutagenesis)

FSANZ has however indicated a different view with respect to ODM. An expert panel it convened to review the new techniques stated that: “ODM is not a recombinant DNA technique.”⁵ Were this view confirmed by FSANZ in an assessment, there would then be no obligation on a food manufacturer to label food products derived from this technique.

This has set up the clear prospect of products that are regulated in the field as GMOs not being labelled as such in foods. If there were to be a challenge to this interpretation of the Food Code for a particular food product, the first point of reference would be the definitions of a GMO and GM product in the FSANZ Act.

² “*gene technology* means any technique for the modification of genes or other genetic material, but does not include:

- (a) sexual reproduction; or
- (b) homologous recombination; or
- (c) any other technique specified in the regulations for the purposes of this paragraph.”

“*genetically modified organism* means:

- (a) an organism that has been modified by gene technology; or
- (b) an organism that has inherited particular traits from an organism (the *initial organism*), being traits that occurred in the initial organism because of gene technology; or
- (c) anything declared by the regulations to be a genetically modified organism, or that belongs to a class of things declared by the regulations to be genetically modified organisms;

but does not include:

- (d) a human being, if the human being is covered by paragraph (a) only because the human being has undergone somatic cell gene therapy; or
- (e) an organism declared by the regulations not to be a genetically modified organism, or that belongs to a class of organisms declared by the regulations not to be genetically modified organisms.

³ The Code defines gene technology as:

recombinant DNA techniques that alter the heritable genetic material of living cells or organisms.

And a food produced using gene technology as:

a food which has been derived or developed from an organism which has been modified by gene technology.

⁴ See for example question to the Senate number 2118 of 8 April 2015

⁵ <http://www.foodstandards.gov.au/publications/Documents/New%20Plant%20Breeding%20Technique%20Workshop%20Report.pdf>

Thus the deletion of these definitions from the Act cannot reasonably be described as having no impact on GM regulation. These changes would:

- Remove a key reference for the interpretation of the Food Code;
- Degrade the ability to ensure consistency between the food products regulated by OGTR and FSANZ, and so the integrity of the food safety regime.

Regulating the new techniques as GM is consistent with leading international opinion on biosafety. The techniques are almost all still in the experimental stage and the Austrian government believes they need to be evaluated for the same risks as current GM techniques (see attached briefing). Yet a key potential impact of the removal of the definitions is that techniques which are credibly regarded as posing similar risks to those already regulated by OGTR could be excluded from food safety labelling as a result of this amendment – through it providing discretion for FSANZ to depart from an OGTR position.

If the change has indeed been prompted simply “as a consequence of amending the definition of ‘appropriate government agency’”, as the New Zealand Government has informed us, we submit that another way needs to be found to allow the governance changes to be implemented without removing the definitions of GMO and GM product.

The Sustainability Council opposes the removal of the definitions of GMO and GM product and asks the Committee to look for ways to allow those definitions to remain and so avoid adverse and unintended impacts on GMO regulation.

3. Notices to OGTR re GMOs

The Bill proposes removing section 19 of the FSANZ Act, which states:

If a provision of this Act requires the Authority to give a notice concerning an existing or proposed food regulatory measure to the Gene Technology Regulator, the Authority is only required to give the notice if the food regulatory measure relates to food that is or contains a GMO or a GM product.

This provision seems clearly intended to provide coordination between the two regulators and one of the benefits of this would be ensuring consistency between the food products regulated by OGTR and FSANZ. As noted above, consistency in approvals for both growing and labelling a GM food is essential for regulatory credibility. No reason is provided in the explanatory note for the removal and none is apparent that is consistent with good regulatory practice.

The proposal to remove section 19 from the Act is opposed.

Contact:
Simon Terry
Executive Director
Sustainability Council
PO Box 24304, Wellington