



Australian Government

Department of Health

SUBMISSION INTO THE INQUIRY OF THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE INTO THE FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT (FORUM ON FOOD REGULATION AND OTHER MEASURES) BILL 2015

Summary of the Bill

The primary objectives of the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015 (the Bill) are to:

- amend the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) to reflect the change of name of the former Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) to the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum);
- amend the Food Standards Australia New Zealand (FSANZ) Board's compositional requirements and appointment process (in relation to consumer rights, science, public health and food industry Board members positions), in accordance with recommendations endorsed by the Forum, to –
 - address the need for flexibility to accommodate FSANZ's future work requirements, and
 - include a competitive selection process (such as external advertising), which the Bill allows to occur simultaneously with the existing nomination process when recruiting for each vacant FSANZ Board member position¹; and
- make other technical amendments to the FSANZ Act to improve the clarity and operation of the legislation—for example, clarifying when FSANZ can abandon a proposal.

¹ The Bill allows the Commonwealth Minister for Health to undertake:

- the current nomination process; or
- a competitive selection process; or
- both processes simultaneously.

Key issues

The key issues identified for this inquiry are:

- amendments related to definitions in the FSANZ Act; and
- amendments to the FSANZ Board's composition, particularly in respect of the Board's science and public health expertise.

Amendments to definitions in the FSANZ Act

The Bill amends definitions in the FSANZ Act related to:

- the name change from the Council to the Forum; and
- amending the definition of “appropriate government agency”.

This submission also focuses on amendments to definitions of “GM product” and “GMO” in the FSANZ Act as a consequence of amending the definition of “appropriate government agency” in the Act.

Definition of “appropriate government agency”

Requirements for FSANZ to notify appropriate government agencies

The FSANZ Act requires FSANZ to notify appropriate government agencies about various matters related to the making, reviewing and varying of food regulatory measures, such as food standards.

Examples include where FSANZ:

- makes a declaration that an application is urgent;
- calls for submissions in relation to applications or proposals to make or vary a draft standard;
- prepares a draft standard or a draft variation of a standard; and
- approves a draft standard or a draft variation of a standard.

The requirement to notify appropriate government agencies is only one of a number of notification requirements imposed on FSANZ by the FSANZ Act. In addition to notifying appropriate government agencies, the FSANZ Act separately requires FSANZ to notify the public and call for submissions at various stages of the standards development process. This is in addition to the notification of appropriate government agencies.²

² This does not apply where the variation sought is a “minor variation” – a variation of a food regulatory measure that, if made, would not:

- impose, vary or remove an obligation on any person; or
- create, vary or remove a right of any person; or
- otherwise alter the legal effect of the measure (sections 36 and 40 of the FSANZ Act).

The current definition of “appropriate government agency”

The current definition of “appropriate government agency” in subsection 4(1) of the FSANZ Act includes a list of specific Commonwealth, State, Territory and New Zealand Departments and authorities, *all* of whom FSANZ must notify about certain matters related to food standards irrespective of whether a particular agency has an interest in the matter.

This can create a situation where FSANZ is obliged to notify Departments and authorities with no interest in the relevant matter and those bodies having to receive and process communication about matters of no interest to them.

Having a prescriptive list in legislation also results in administrative difficulties associated with keeping the list current. An example is where machinery of government changes result in name changes of Departments and authorities, as well as existing bodies being restructured. Updating a list in legislation requires legislative amendment and the associated time delays.

The proposed definition of “appropriate government agency”

Item 1 of Schedule 1 of the Bill repeals the definition of “appropriate government agency” in subsection 4(1) of the FSANZ Act and replaces it with a new definition of the term.

The proposed new definition of “appropriate government agency” captures the following:

- the relevant Department of the Commonwealth, State, Territory or New Zealand administered by a Minister who is a member of the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum on Food Regulation);
- any other body that has an officer on the Food Regulation Standing Committee (“FRSC” – a subcommittee of the Forum on Food Regulation); and
- any other body or officer of the Commonwealth, a State, a Territory or New Zealand that FSANZ considers has a particular interest in the relevant matter.

The proposed new definition –

- still requires FSANZ to notify each Commonwealth, State, Territory and New Zealand Department whose Minister is a member of the Forum as well as any other body or agency that has a representative on FRSC;
- provides FSANZ with greater flexibility, whereby FSANZ would have to notify other bodies or officers of the Commonwealth, a State, a Territory or New Zealand that FSANZ knows have a particular interest in the relevant matter;
- enables FSANZ to notify bodies or officers of the Commonwealth, a State, a Territory or New Zealand who are not listed in the current definition but who FSANZ considers do have a particular interest in the relevant matter; and
- removes the regulatory burden on Departments and authorities currently specified in the Act in that those bodies no longer have to deal with notifications about matters of no interest to them.

The aim of this amendment is to allow the process of developing, reviewing and varying food standards to be more flexible, relevant and efficient.

Effect of proposed new definition of “appropriate government agency” on the Gene Technology Regulator

The effect of this new definition for the Gene Technology Regulator (GTR) is that where the FSANZ Act requires FSANZ to notify an “appropriate government agency” in relation to an application or proposal, FSANZ would have to notify the GTR where FSANZ considers that the GTR has a particular interest in the relevant matter, for example, where the application or proposal relates to genetically modified (GM) food, noting that GTR regulates genetically modified organisms (GMOs) under the *Gene Technology Act 2000* (the GT Act) and the connection between GMOs and GM food.

Amending the requirement for FSANZ to give notices to the GTR

Item 11 of Schedule 1 of the Bill repeals section 19 of the FSANZ Act, which relates to notices given to the GTR by FSANZ concerning food regulatory measures, such as food standards, relating to food that “is or contains a GMO or a GM product”.

This amendment is a direct consequence of the new definition of “appropriate government agency” in item 1, which would render section 19 of no effect.

Definitions of GMO and GM product

Item 4 of Schedule 1 of the Bill repeals the definitions of “GMO” and “GM product” in subsection 4(1) of the FSANZ Act as a consequence of the proposed new definition of “appropriate government agency” and repealing section 19 of the FSANZ Act.

“GMO” and “GM product” are terms defined in the GT Act and which have restricted application in the FSANZ Act. “GMO” and “GM product” are terms used *only* in relation to notices given to the GTR by FSANZ under section 19 of the FSANZ Act (mentioned above) concerning food regulatory measures for food that is or contains a GMO or GM product. These terms have no other operation in the FSANZ Act and are not used in Standard 1.5.2 (Food Produced Using Gene Technology).

Effect of repealing the definitions of “GM product” and “GMO” in the FSANZ Act

The above amendments will have no effect on the Australia New Zealand Food Standards Code (the Code). Nor do they change the Code.

The above amendments will not affect regulation of GM food. They make no change to the definitions or to the labelling requirements for GM food of Standard 1.5.2.

The above amendments will not remove the requirement for FSANZ to notify bodies or officers of the Commonwealth, State, Territory or New Zealand with a particular interest in genetically modified food, including the GTR, of applications or proposals relating to such food.

Under the current provisions of the FSANZ Act, FSANZ is only required to consult the GTR if a regulatory measure relates to ‘food that is or contains a GMO or GM product’ (as defined in the Gene Technology Act). FSANZ is responsible for assessment of ‘food produced using gene technology’ (Standard 1.5.2) while the GTR is responsible for regulation of GMOs, defined in the GT Act as ‘organisms modified by gene technology’. However, the definitions of ‘gene technology’ in Standard 1.5.2 and the GT Act are drafted differently. Consequently, the amendments in the Bill will, in effect, allow greater flexibility for FSANZ to consult the GTR on any technologies captured under Standard 1.5.2 definitions, not just those captured by the GMO and GM product definitions of the GT Act.

In addition, FSANZ will still make public its evaluations and, therefore, will remain accountable for consulting with appropriate government agencies.

As stated above, the FSANZ Act separately requires FSANZ to notify the public and call for submissions at various stages of the standards development process. This is in addition to the notification of appropriate government agencies.³ Further, the amendments do not affect the requirement that FSANZ “must have regard to submissions received”, for example submissions from the GTR. Consequently, there is no loss of transparency and accountability.

Amendments to the compositional requirements of the FSANZ Board

The amendments related to the FSANZ Board’s compositional requirements in Schedule 2 of the Bill relate to the following recommendations made arising out of a review of the FSANZ Board’s appointment process and which were endorsed by the Forum.

Review of the FSANZ Board’s appointment process

At its meeting in April 2013, FRSC members (consisting of representatives from the Commonwealth, all states and territories and New Zealand) considered that it was necessary to conduct a review of the FSANZ Board appointment process (the review), because the appointment process had been followed since 2002 and it was considered timely to review it.

The review was informed by a one on one consultation process with interested FRSC members, the Chair of the FSANZ Board and the Chief Executive Officer (CEO) of FSANZ in late 2013. A survey was also sent to nominating organisations listed in the FSANZ Act seeking feedback on the process (List of nominating organisations is at **Attachment A**⁴). This consultation process, as well as the survey results, was considered when developing the review report and recommendations.

This review made several recommendations in relation to consumer rights, science, public health and food industry Board member positions, which included amending:

³ With the exception of the procedure adopted for minor variations. As to what is a “minor variation” – refer to note 2 above.

⁴ **Attachment A** is a copy of Schedule 2A (Board - prescribed organisations and public bodies from whom nominations may be sought), which was in force at the time the review was being undertaken.

1. the compositional requirements of the FSANZ Board to address the need for flexibility to accommodate FSANZ's future work requirements; and
2. in relation to certain categories of Board members, amend the nomination process to be an open market process by advertising for upcoming Board vacancies externally, as well as seeking nominations from identified organisations.⁵

All FRSC members were invited to participate in the review process mentioned above and were provided with the review report which was discussed at the FRSC meeting on 21 November 2014. Members agreed with the recommendations in the report relevant to the Bill and agreed that those recommendations and a copy of the final report should be provided to the Forum for its consideration and endorsement.

The Forum was provided with a copy of the final review report mentioned above at the meeting on 30 January 2015. Ministers endorsed the nine recommendations in that report noting that some of these recommendations (including the recommendations on changes to the board member nomination process) required amendments to the FSANZ Act.

Current composition of the FSANZ Board

Section 116(1) of the FSANZ Act currently provides that the FSANZ Board consists of:

- (a) a Chairperson; and*
- (b) the Chief Executive Officer; and*
- (c) 2 members nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and*
- (ca) one member nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and*
- (d) a member nominated by consumer organisations; and*
- (e) a member nominated by the CEO of the National Health and Medical Research Council; and*
- (f) 3 members nominated by organisations, or public bodies, established for purposes relating to science or public health; and*
- (g) 2 members nominated by organisations, or public bodies, established for purposes relating to the food industry.*

Regulation 6A of the *Food Standards Australia New Zealand Regulations 1994* (the FSANZ Regulations) sets out prescribed lists of nominating Australian and New Zealand organisations and public bodies in relation to science, public health and food industry members.

⁵ As to how the Bill addresses this recommendation, refer to note 1 above.

Proposed composition of the FSANZ Board

Items 2 and 6 of Schedule 2 of the Bill propose to amend the FSANZ Act so that the FSANZ Board would have 12 members consisting of:

1. the CEO;
2. a Chairperson (with science, public health and/or food industry fields of expertise);
3. two members nominated by the NZ lead Minister on the Forum (with science, public health and/or food industry fields of expertise);
4. one member nominated by the NZ lead Minister on the Forum (with science and/or public health fields of expertise);
5. at least one consumer rights member with consumer rights and consumer affairs expertise;
6. at least two members with science and/or public health expertise (at least 1 must have expertise primarily related to science and at least 1 must have expertise primarily related to public health); and
7. at least one member with food industry expertise.

The total number of consumer rights, science and public health, and food industry members must be seven.

Conditions placed on the Minister's power to appoint FSANZ Board members

Under the proposed amendments, the Commonwealth Minister for Health (the Minister) does not have unfettered power to appoint FSANZ Board members. Instead, the Minister may only appoint FSANZ Board members if certain conditions, specified in the Bill, are met.

Item 6 of Schedule 2 of the Bill proposes a new section 116A (Members appointed by the Minister).

Under section 116A, the Minister would only be able to appoint a person as a consumer rights, science, public health or food industry FSANZ Board member if:

- the Minister is satisfied that the person has the requisite expertise (as listed in Column 2 of the Table to section 116A) and is suitably qualified for appointment because of that expertise; and
- the Minister is satisfied that the person has expertise relevant to FSANZ's performance of its functions over the period of appointment (the Minister must have regard to FSANZ's forward plan prepared under section 20 of the FSANZ Act); and
- either the person:
 - has been nominated by an Australian or New Zealand organisation or public body from which the Minister sought nominations and which was established for the purposes relating to one or more of the fields of expertise related to the person's appointment, or
 - was selected in accordance with a competitive selection process covering Australia and New Zealand; and
- the Forum agrees to the appointment.

In relation to appointments of consumer rights, science, public health or food industry Board members, the amendment allows the Minister to undertake:

- the current nomination process; or
- a competitive selection process; or
- both processes simultaneously.

However, it is intended that both processes would be undertaken simultaneously - in accordance with the recommendation of the review, which was endorsed by the Forum.

The lists of nominating Australian and New Zealand organisations and public bodies will no longer be prescribed in the FSANZ Regulations, which will also be amended to reflect that. Instead, there will be a list of nominating Australian and New Zealand organisations and public bodies, including the National Health and Medical Research Council (the NHMRC), that will be maintained and made publicly available by the Australian Department of Health. Depending on which FSANZ Board member position is the subject of recruitment, the Minister would seek nominations from the relevant organisations and public bodies on this list.

In addition, declaration of interest considerations will be a part of the selection process in relation to both the process of seeking nominations from Australian and New Zealand organisations and public bodies on the above-mentioned list, as well as the new competitive selection process.

The aims of these proposed amendments, in relation to consumer rights, science, public health or food industry FSANZ Board member positions, are to:

- address the need for flexibility to accommodate FSANZ's future work requirements; and
- amend the nomination process to be an open market process by advertising for upcoming Board vacancies externally, as well as seeking nominations from identified organisations.

The general intention in relation to the amendments to the FSANZ Board compositional requirements is to open up the pool of potential candidates for vacant FSANZ Board member positions and to ensure that the FSANZ Board has the right mix of skills for FSANZ's future work requirements.

Attachment A

**FOOD STANDARDS AUSTRALIA NEW ZEALAND REGULATIONS 1994 -
SCHEDULE 2A**

Board – prescribed organisations and public bodies from which nominations may be sought
(regulation 6A)

Part 1 Science and public health organisations and public bodies

Item	Organisation or public body	Subparagraph of paragraph 116 (3) (a)
	Australian organisations and public bodies	
101	Australian Academy of Science	Subparagraph (vi)
102	CHOICE	Subparagraphs (i) and (ii)
103	Australian Institute of Environmental Health	Subparagraphs (i), (iii), (vii) and (viii)
104	Australian Medical Association Limited	Subparagraphs (i) and (vi)
104A	Australian Society for Biochemistry and Molecular Biology Incorporated	Subparagraphs (vi), (vii) and (ix)
105	Australian Veterinary Association Ltd	Subparagraph (x)
106	Consumers' Health Forum of Australia Incorporated	Subparagraphs (i) and (ii)
107	Dietitians Association of Australia	Subparagraphs (i), (iii), (iv), (v) and (viii)
108	Food Science Australia	Subparagraphs (iii), (iv), (v), (vii) and (viii)
109	National Aboriginal Community Controlled Health Organisation	Subparagraphs (i) and (ii)
110	Nutrition Australia	Subparagraphs (i), (ii) and (v)
111	Nutrition Society of Australia Incorporated	Subparagraphs (iii), (iv), (v) and (viii)
112	Public Health Association of Australia Incorporated	Subparagraphs (i), (ii), (iii), (iv), (v) and (viii)
113	Royal Australian Chemical Institute Incorporated	Subparagraph (iii)
115	The Australian Institute of Food Science and Technology Incorporated	Subparagraphs (i), (iii), (iv), (v), (vii) and (viii)
116	The Australian Society for Microbiology Incorporated	Subparagraph (vii)

117	The Royal Australasian College of Physicians (Faculty of Public Health Medicine) New Zealand organisations and public bodies	Subparagraphs (i), (v) and (vi)
150	Association of Crown Research Institutes Incorporated	Subparagraphs (i), (ii), (iii), (vi), (vii), (viii) and (ix)
151	Consumer Forum on Food Safety	Subparagraph (ii)
152	Consumers' Institute of New Zealand Incorporated	Subparagraphs (ii), (v) and (viii)
153	Health Research Council of New Zealand	Subparagraphs (i), (iv), (v), (vi), (vii) and (ix)
154	Maori Women's Welfare League Inc	Subparagraphs (i), (ii) and (viii)
155	National Council of Women of NZ (Inc)	Subparagraph (ii)
156	New Zealand Biotech 2003 Incorporated	Subparagraph (ix)
157	The Royal Australasian College of Physicians, New Zealand Committee, Faculty of Public Health Medicine	Subparagraphs (i), (v) and (vi)
158	New Zealand Dietetic Association (Inc)	Subparagraphs (i), (ii), (iii), (iv), (v) and (viii)
159	The New Zealand Institute of Food Science and Technology	Subparagraphs (iii), (viii) and (ix)
160	New Zealand Medical Association Inc	Subparagraphs (i) and (vi)
161	New Zealand Nutrition Foundation	Subparagraphs (v), (vi) and (viii)
162	The Public Health Association of New Zealand Incorporated	Subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) and (ix)
163	The Royal Society of New Zealand	Subparagraphs (vii) and (ix)

Part 2 Food industry organisations and public bodies

Item	Organisation or public body	Subparagraph of paragraph 116 (4) (a)
Australian organisations and public bodies		
201	Australian Chamber of Commerce and Industry	Subparagraphs (i), (ii), (iv), (vi) and (vii)
202	Australian Food and Grocery Council	Subparagraphs (i), (ii), (v), (vi) and (vii)
203	Australian Hotels Association	Subparagraphs (i), (iv), (vi) and (vii)
204	The Australian Industry Group	Subparagraphs (i), (iv), (v), (vi) and (vii)
205	The Australian Retailers Association	Subparagraphs (i), (ii) (iv), (vi) and (vii)
206	Council of Small Business Organisations of Australia Limited	Subparagraphs (iv) and (vi)

205	The Australian Retailers Association	Subparagraphs (i), (ii) (iv), (vi) and (vii)
206	Council of Small Business Organisations of Australia Limited	Subparagraphs (iv) and (vi)
207	National Association of Retail Grocers of Australia Pty Ltd	Subparagraphs (ii) and (iv)
208	National Farmers' Federation Limited	Subparagraphs (iii), (iv), (v) and (vi)
209	Restaurant and Catering Australia	Subparagraphs (i), (iv), (v) and (vii)
	New Zealand organisations and public bodies	
250	National Association of Retail Grocers and Supermarkets of New Zealand Inc	Subparagraphs (i), (ii) and (iv)
251	New Zealand Grocery Marketers Association (Inc)	Subparagraphs (i), (ii), (iv) (v), (vi) and (vii)
252	New Zealand Retailers Association Incorporated	Subparagraph (ii)
