

Australian Greens Senators' Dissenting Report

1.1 The Australian Greens do not support the recommendation in the majority report that the Bill be passed in its current form.

1.2 Food Standards Australia New Zealand (FSANZ) has an important role to play in developing and administering the Food Standards code. This requires a strong legislative framework and a balanced board appointment process ensuring representation for consumers and public health experts.

1.3 We thank those who have provided submissions to the Committee highlighting the complexity and potential concerns associated with a number of the changes proposed in the *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015*.

The FSANZ Board

1.4 The Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015 ('the Bill') changes how the FSANZ board is appointed, including the composition of the board.

1.5 The Department of Health noted in its submission that the changes 'relate to ... recommendations made arising out of a review of the FSANZ Board's appointment process'.¹ However as the Parliamentary Library's Bills digest noted, 'Unfortunately that report has not been published. Therefore it is not possible to gauge whether the amendments appropriately reflect those recommendations'.²

1.6 A number of submissions noted concerns over the changes proposed in the Bill. The Public Health Association of Australia did not support key aspects of the proposed changes, and noted that:

The new proposed wording ... provides greater flexibility to the Minister ... this level of flexibility in selecting Board members has the potential to

- 1) Have a large number of members with strong industry ties;
- 2) Diminish the public health perspectives; and
- 3) Decrease the independence / objective scrutiny of the quality of the science.³

1.7 Gene Ethics similarly said in its submission that:

1 *Submission 8*, p. 5.

2 Australian Parliamentary Library, 'Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015', *Bills Digest No. 32, 2015–16*, p. 6, 14 October 2014, http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/4133205/upload_binary/4133205.pdf;fileType=application/pdf.

3 *Submission 1*, p. 7.

Vesting the power to appoint the FSANZ Board in a single Minister would politicize the appointment process and disenfranchise all other members of the Forum on Food Regulation, plus their constituents. It would repeal those provisions in the present Act which help to ensure that the Board is broadly representative and diverse in its composition, expertise and views, as it should be. Giving a Minister sole power to appoint would be an invitation for the most numerous and powerful sectoral interests on the Board to be over-represented and too influential. This would be undemocratic and not in the public interest.⁴

Recommendation 1

1.8 The Australian Greens recommend that the Bill be amended to retain the current Board appointment process.

Notifying the Gene Technology Regulator and definitions of GM product and GMO in the FSANZ Act

1.9 The Bill also amends the definition in the *Food Standards Australia New Zealand Act 1991* ('the FSANZ Act') of an 'appropriate government agency'. As the Department of Health noted in its submission:

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.⁵

1.10 Currently the definition of an 'appropriate government agency' includes the Gene Technology Regulator (GTR). However FSANZ has discretion as specified under 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.⁶

1.11 The FSANZ Act includes definitions of GMO and GM product by reference to the *Gene Technology Act 2000*.

1.12 The Bill proposes to amend the definition of an 'appropriate government agency', so that the GTR is no longer explicitly specified. Instead, under the amendment proposed in the Bill FSANZ will be required to notify the GTR 'where FSANZ considers that the GTR has a particular interest in the relevant matter...'.⁷

1.13 The GTR has supported this change in its submission to the Committee, on the basis that 'the new definition will in no way remove the ability of FSANZ to seek

4 *Submission 5*, p. [5].

5 *Submission 8*, p. 2.

6 *Food Standards Australia New Zealand Act 1991*, s. 19.

7 *Submission 8*, p. 4.

advice from me [the Gene Technology Regulator] or my office in any relevant matter'.⁸

1.14 As a consequence of this change, the Bill removes the current definitions of GMO and GM product from the FSANZ Act. A number of submissions noted concerns about this proposed change, both in relation to coordination between regulators, and particularly in relation to the removal of definitions from the FSANZ Act.

1.15 Gene Ethics said that:

Deletion of the definition of GMO and GM product from the Food Standards Act would enable FSANZ to substitute definitions in the Food Standards Code which are much weaker than those in the Gene Technology Act. The food products of new Genetic Manipulation (GM) techniques now being developed in labs around the world may be automatically excluded from FSANZ regulatory purview as a result of these definitions. But a deregulatory approach may put public health and safety in serious jeopardy, as these products have no history of safe use. Excellent scientific evidence, stringent assessment and epidemiological studies that track the impacts of any of these novel food products that may be commercialized, will be essential ...

FSANZ notice to the OGTR of GM food applications and approvals is essential to the secure and co-ordinated regulation of GMOs and GM food products. The effective and failsafe functioning of the Commonwealth's integrated regulatory system depends on seamless and transparent co-ordination of decisions between various regulators.⁹

1.16 Similarly, Friends of the Earth Australia said:

We are concerned by the removal of the Office of the Gene Technology Regulator (OGTR) from this list. We believe that communication across agencies is vital in ensuring an effective and consistent regulatory system for GMOs. FSANZ should be compelled to inform the OGTR if it makes a regulatory decision regarding GMOs.¹⁰

1.17 Friends of the Earth Australia also noted significant concerns around the removal of the definitions of GM product and GMO from the Act:

The proposed amendments would delete the definitions of GMO (genetically modified organism) and GM production from Section 4 of the Act. Once they are gone the only definitions remaining are those in the Food Standards Code (Standard 1.5.2) which are not as broad and could be amended without Parliamentary debate. There is no coherent justification for these changes in the Explanatory Memorandum for the Bill.

8 *Submission 4*, p. [2].

9 *Submission 5*, p. [2].

10 *Submission 6*, p. [1].

The definition of GMO in the Food Standards Australia New Zealand Act 1991 is currently the same as that in the Gene Technology Act 2000 and refers to an organism (or progeny of an organism) that has been modified by gene technology. The Act defines gene technology as "any technique for the modification of genes or other genetic material". This definition would clearly include new GM techniques unless they were specifically exempted. We are concerned that by deleting this definition from the Act FSANZ is attempt to deregulate these techniques by stealth.

The definition of gene technology in the Food Standards Code is not as broad and is defined as "recombitant DNA techniques that alter the heritable genetic material of living cells or organisms". Certain new GM techniques may not be covered under this definition. For example, in 2012 FSANZ convened an expert panel – comprised almost entirely of genetic engineers with gene technology patents – to look at whether certain new GM techniques should be considered genetic engineering. The panel expressly concluded that one of these techniques, "ODM [oligo-directed mutagenesis] is not a recombitant DNA technique."

Likewise, a number of new GM techniques, such as Pioneer H-Bred's proprietary seed production technology (SPT) involve a GM parent but the GM crop industry is arguing that the final breeding product is not GM. Whilst these products would be defined as GMOs under the Gene Tech Act it is not clear that they would be included under the definition in the Food Standards Code.

The full implication of these changes in the context of new GM technologies need full examination before these amendments are considered.¹¹

1.18 Similarly, a submission by the Sustainability Council of New Zealand argued that '... the deletion of these definitions from the Act cannot reasonably be described as having no impact on GM regulation', and opposed their removal.¹²

1.19 Given these concerns highlighted in submissions, the Australian Greens do not support the proposal to remove the GTR from the list of 'appropriate government agencies'.

Recommendation 2

1.20 The Australian Greens recommend that the Office of the Gene Technology Regulator be explicitly retained as an 'appropriate government agency' for the purposes of the *Food Standards Australia New Zealand Act 1991*.

1.21 This will ensure the current framework for notifications to the GTR remains in place. Under section 19 of the FSANZ Act, there will still be an exemption so that FSANZ is not required to give notice if the food regulatory measure does not relate to a GM product or GMO. This approach will ensure the definitions (by reference to the

11 *Submission 6*, p. [2].

12 *Submission 7*, p. 3.

Gene Technology Act 2000) are retained in the FSANZ Act, addressing a key concern in a number of submissions.

Regulation Impact Statements

1.22 Items 14, 32 and 87 in the Bill amend the FSANZ Act so that FSANZ is only required to include a Regulation Impact Statement (RIS) in a report where it has been required to prepare a RIS under the Office of Best Practice Regulation Guidelines. The Explanatory Memorandum states that this '... recognises that there are occasions when an exemption may be given from the requirement to prepare a Regulation Impact Statement'.¹³

1.23 The Public Health Association of Australia said that:

In relation to the proposed amendment, the criteria to determine when 'if applicable' applies is not clear and the absence of a RIS on a recommended amendment may provide grounds for the Ministerial Forum to reject a Board decision to amend the Food Standards Code. If this proposed amendment is accepted, it should be accompanied by clear criteria for when 'if applicable' will or will not be relevant.¹⁴

1.24 The Australian Food and Grocery Council similarly did not support this change, but said:

Rather than leaving the preparation of a RIS to the somewhat vague test of "if appropriate", the AFGC recommends that the FSANZ Act refer to making available either a RIS or the submission to, and reply from, OBPR that justifies why a RIS is not required. This would ensure a degree of transparency, and opportunity for contestability, in relation to the RIS process.¹⁵

1.25 Gene Ethics similarly supported retaining the current requirement for a RIS, without amendment.¹⁶

Recommendation 3

1.26 The Australian Greens recommend that FSANZ continue to publish Regulation Impact Statements, as a way of ensuring appropriate transparency around decision making.

Recommendations

Recommendation 1

1.27 The Australian Greens recommend that the Bill be amended to retain the current Board appointment process.

13 EM, p. 6.

14 *Submission 1*, p. 7.

15 *Submission 3*, p. 5.

16 *Submission 5*, pp [3–4].

Recommendation 2

1.28 The Australian Greens recommend that the Office of the Gene Technology Regulator be explicitly retained as an 'appropriate government agency' for the purposes of the *Food Standards Australia New Zealand Act 1991*.

Recommendation 3

1.29 The Australian Greens recommend that FSANZ continue to publish Regulation Impact Statements, as a way of ensuring appropriate transparency around decision making.

Recommendation 4

1.30 That the *Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015* not be passed in its current form.

Senator Rachel Siewert