

---

## 13 Maximum residue limits

### Key points

- For new agricultural and veterinary chemicals, the combined processes for registering the chemical and including the appropriate maximum residue limits (MRLs) in food regulation are more streamlined in New Zealand compared to Australia.
- In 2008-09, Food Standards Australia New Zealand (FSANZ) took between 8 and 10 months to decide each proposal/application to include/amend MRLs within the Australia New Zealand Food Standards Code (ANZFS Code), compared to 4–12 months in 2007-08. In contrast, for the equivalent New Zealand process, the New Zealand Food Safety Authority (NZFSA) and relevant Minister, took 4–8 months in 2008-09 and 4–9 months in 2007-08.
  - In Australia, the average time from FSANZ's decision to the gazettal of that decision (including the Australia and New Zealand Food Regulation Ministerial Council's consideration of the decision) was around three months. In New Zealand, the comparable period was around two weeks.
- Since October 2007, FSANZ must make a decision on certain MRL amendments within nine months of commencing its assessment. This time limit applies only to applications and a limited range of proposals — to date, no MRL amendments considered by FSANZ have been subject to the time limit.
- The Australian decision process has some features, absent from the New Zealand process, that could contribute better outcomes for business, including:
  - a direct consideration of the compliance costs of business as part of the assessment — both Australia and New Zealand consider the more general costs affecting business, such as unnecessary restrictions on trade, as part of their chemical registration processes
  - an appeals process — New Zealand business seeking an amended decision must pursue other avenues (such as lodging another application).
- While the administration and enforcement of MRLs in New Zealand is the responsibility of one body (the NZFSA), 22 state and territory departments/agencies have responsibility for some aspect of the administration and enforcement of MRLs in Australia.
  - A number of these state and territory departments/agencies are enforcing MRLs within the Australian Pesticides and Veterinary Medicines Authority (APVMA) MRL standard for the purposes of a chemical control-of-use Act rather those within the ANZFS Code for compliance with a Food Act.
- The rate of compliance with MRLs in Australia and New Zealand is generally 94 per cent or higher.

---

## 13.1 Introduction

Food can contain the residues of the agricultural or veterinary chemicals used in its production or absorbed from the environment during its production. The maximum residue limits (MRLs)<sup>1</sup> contained in food regulation, while not direct food safety limits, act to protect public health and safety by minimising these residues in food consistent with the effective control of pests and diseases. More generally, MRLs are used as a regulatory tool to monitor the use of agricultural or veterinary chemicals.

MRLs are primarily set accordingly to what constitutes ‘good agricultural or veterinary practice’ — the lowest use of a chemical necessary to achieve effective control of a particular pest or disease given a country’s climatic, environmental and pest conditions. As such, the specification, administration and enforcement of MRLs are only part of the overall regulation of the agricultural and veterinary chemicals used in food production in Australia and New Zealand. Both countries have similar structures for the regulation of agricultural and veterinary chemicals (figure 13.1), in that:

- a chemical must be registered before it can legally be used. There are regulatory limitations on the use of the chemical — for example, constraints on the aerial application of pesticides and withholding periods<sup>2</sup> for stock and crops treated with chemicals
- raw foods are tested for compliance with MRLs.

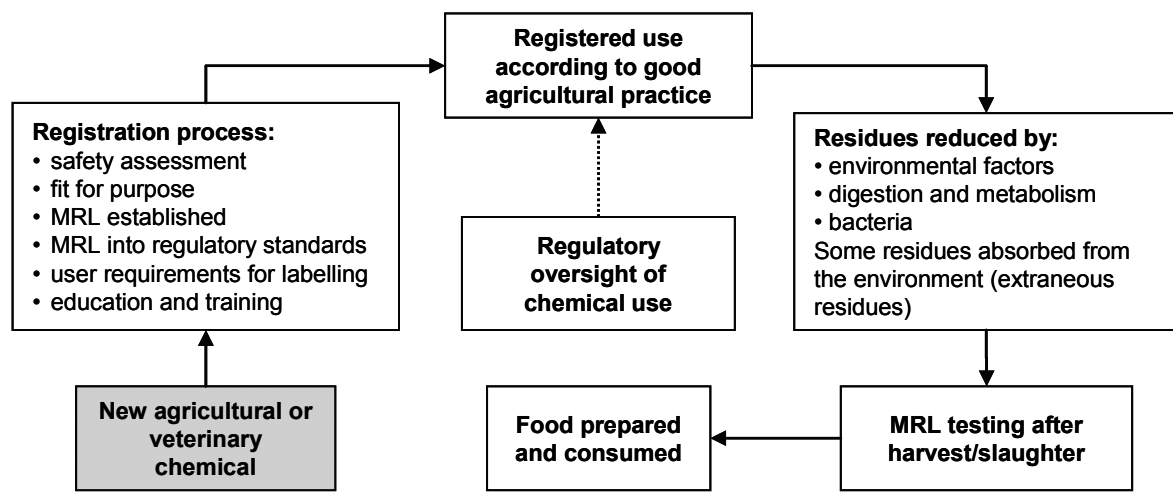
As referred to in chapter 2 (section 2.1), the Joint Food Standards Setting Treaty between Australia and New Zealand excludes MRLs from the food standards to be harmonised between the countries. As a result, there are a number of differences in the MRLs in effect in Australia and New Zealand. Further, Australia and New Zealand continue to act independently in specifying the chemicals (and foods) to which MRLs will apply and the level of the MRLs that will apply for given food/chemical combinations. Box 13.1 outlines some of the reasons why MRLs vary across countries.

---

<sup>1</sup> For the purpose of this study, MRLs also include those limits, known as Extraneous Residue Limits, which apply to chemicals that are no longer in use but that remain in the environment as a result of previous use.

<sup>2</sup> The withholding period is the minimum period which must elapse between the last application of an agricultural or veterinary chemical (including treated feed) and the slaughter or harvest of the food for human consumption or further agricultural use (for example, as stock feed).

Figure 13.1 The regulation of chemicals used in food production



Source: Based on NZFSA (2009d), p. 10.

Despite the similarities in their overarching approaches to the regulation of agricultural and veterinary chemicals, there are differences between Australia and New Zealand in the specification, administration and enforcement of MRLs. The most striking of these differences is that, in New Zealand, these functions are largely the responsibility of one body, the New Zealand Food Safety Authority (NZFSA), while in Australia, these same functions are shared across a number of Commonwealth and state/territory departments and agencies.

The primary focus of this chapter is on the specification, administration and enforcement of the MRLs contained within food regulations. These are covered in sections 13.2 (specifying and varying MRLs) and 13.3 (business compliance with MRLs) within the context of the overall regulation of agricultural and veterinary chemicals.

---

### Box 13.1 Why maximum residue limits vary across countries

Many countries include MRLs within their food regulation frameworks. However, there is a large degree of variation in the MRLs set by these countries — ranging from the chemicals (and foods) for which MRLs are set to the level of the MRLs set for given food/chemical combinations. This variation persists despite the existence of the Codex MRLs which are intended to inform the MRL setting processes of individual countries and to serve as the standard for international trade in food (see chapter 2 (section 2.1) for details of the Codex Alimentarius Commission (CAC)).

One of the main reasons MRLs vary between countries is that they are, in part, directed at ensuring agricultural and veterinary chemicals are used according to good practice. Accordingly, MRLs will vary depending upon the circumstances of each country and, in light of those circumstances, what constitutes ‘good agricultural (or veterinary) practice’. Some hypothetical examples of such situations are:

**Hypothetical example 1** — A particular pest (‘pest P’) is controlled by a pesticide containing a certain chemical (‘chemical C’). Pest P is very prominent in ‘country A’ and has only a minor presence in ‘country B’. As a result, it would be expected that producers in country A would use more of the pesticide compared to those in country B. Also, due to differences in the environmental conditions of the two countries (figure 13.1), residues of chemical C reduce more quickly in country B than in country A. In these circumstances, and assuming the application of the pesticide in country A does not result in a threat to public health, country A might set a higher MRL for chemical C in the foods requiring protection from pest P when compared to country B.

**Hypothetical example 2** — Country A produces a certain food (‘food F’) which is not produced by country B. Food F is susceptible to a disease which can only be treated with a certain veterinary chemical (‘chemical V’). As country B does not produce this food it is unlikely it will have an MRL for chemical V in food F. Country A, on the other hand, will have an MRL (or MRLs) that reflects good veterinary practice for the production of food F in country A.

## 13.2 Specifying and varying the MRLs in food regulation

### Responsibility for the MRLs in food regulation

In Australia, Food Standards Australia New Zealand (FSANZ) is responsible for developing and amending food standards — including Standard 1.4.2 (Maximum Residue Limits) of the Australia New Zealand Food Standards Code (ANZFS Code) which lists the permissible MRLs for food. The ANZFS Code is given the effect of law in the Australian states and territories via their Food Acts (see chapter 2). Accordingly, the MRLs listed in Standard 1.4.2 apply uniformly across Australia.

---

In New Zealand, the Agricultural Compounds and Veterinary Medicines (ACVM) Group within the NZFSA is responsible for specifying the MRLs outlined in the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008*. The *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* is given the effect of law in New Zealand via the *Food Act 1981* (NZ).

In both Australia and New Zealand, the registration of a new agricultural or veterinary chemical (see below and figure 13.1) is typically the prompt for the establishment of a new MRL (or set of MRLs).<sup>3</sup> However, the creation of, or amendments to, MRLs may be sought for a number of reasons, including changes in good agricultural (or veterinary) practice, the deregistration of a chemical, the identification of a new use for an existing chemical or to facilitate trade.

#### *Registering a new chemical in Australia*

No agricultural or veterinary chemical can be legally sold or used in Australia prior to registration by the Australian Pesticides and Veterinary Medicines Authority (APVMA) under the National Registration Scheme (box 13.2). However, the APVMA can issue a permit that allows a person to use a chemical in a situation that would otherwise be illegal, if it were not for the issue of the permit (box 13.3).

#### **Box 13.2 The National Registration Scheme and the Australian Pesticides and Veterinary Medicines Authority**

In 1991, the Commonwealth, states and territories of Australia agreed to establish the National Registration Scheme. The scheme was established to provide for the uniform regulation of the manufacture and supply of agricultural and veterinary chemicals and to streamline the registration process for these chemicals.

The APVMA is a statutory authority established in 1993 to undertake the Commonwealth's regulatory responsibilities under the National Registration Scheme. The APVMA is responsible for regulating the manufacture of agricultural and veterinary chemicals throughout Australia and for their control up to, and including, the point of retail sale. This includes responsibility for the registration of pesticides and veterinary medicines under the National Registration Scheme, as well as quality assurance and compliance matters during their manufacture, distribution and sale.

*Source:* APVMA (2004).

---

<sup>3</sup> FSANZ can include MRLs in Standard 1.4.2 relating to chemicals that have not been registered by the APVMA — for example, in relation to imported food produced using a chemical not required or used in Australia (sub. 16).

### Box 13.3 APVMA permits

Situations can arise where a chemical needs to be used in a manner other than that specified on its label ('off-label' use). The APVMA can issue permits that allow for the legal use of chemicals in such situations. Permits can be issued for emergency uses and research purposes. They can also be issued for a 'minor use' of the chemical, for example:

- use on a speciality crop or animal grown on a small scale
- limited use on a small percentage of a major crop for the control of a minor pest
- unusual seasonal conditions requiring a changed method or rate of application.

Source: APVMA (2008b).

The APVMA must consider a number of matters when assessing an application to register a chemical (table 13.1). An important part of satisfying the criterion that a chemical does not present 'an undue hazard to the safety of people' (table 13.1) is establishing that any potential residues in food produced using that chemical are within safe limits. To achieve this, the APVMA undertakes a toxicological evaluation, a dietary exposure evaluation and an MRL evaluation. In doing so, the APVMA establishes MRLs for the chemical which are published in its MRL Standard (table 13.2). These tables are separate to the MRLs set out in Standard 1.4.2 of the ANZFS Code and have no effect, in their own right, in food regulation. However, it is the MRLs listed in table 1 of the APVMA MRL Standard that the APVMA recommends to FSANZ for inclusion in Standard 1.4.2.

**Table 13.1 Considerations for the registration of a chemical**

<i>Australia (APVMA)</i>	<i>New Zealand (NZFSA)</i>
Before registering a chemical, the APVMA must be satisfied that: <ul style="list-style-type: none"><li>• the instructions for its use will be 'effective' according to the criteria determined by the APVMA</li><li>• when the chemical is used according to the label directions it will not result in:<ul style="list-style-type: none"><li>– an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues</li><li>– an effect that is harmful to humans</li><li>– an unintended effect that is harmful to animals, plants or the environment</li><li>– undue prejudice to Australia's international trade interests</li></ul></li><li>• the chemical works effectively against the pest(s), disease(s) or condition(s) claimed on the label.</li></ul>	Before registering a chemical, the NZFSA must consider the: <ul style="list-style-type: none"><li>• risks to public health</li><li>• risks to trade and market access for primary produce</li><li>• exclusion, eradication and effective management of pests and unwanted organisms</li><li>• risks to the welfare of animals</li><li>• risks to domestic food residue standards</li><li>• benefits of the chemical and the likely consequences of the public not having access, or having restricted access, to that chemical.</li></ul>

Sources: *Agricultural and Veterinary Chemicals Code Act 1994 — Schedule Agricultural and Veterinary Chemicals Code (Cwlth)*; *Agricultural Compounds and Veterinary Medicines Act 1997 (NZ)*.

---

**Table 13.2 APVMA MRL Standard**

Table	Subject matter
Table 1	Maximum Residue Limits of agricultural and veterinary chemicals and associated substances in food commodities
Table 2	Portion of the commodity to which the maximum residue limit applies (and which is analysed)
Table 3	Residue definition
Table 4	Maximum residue limits for pesticides in animal feed commodities
Table 5	Uses of substances where maximum residue limits are not necessary

Source: APVMA (2009).

### *Registering a new chemical in New Zealand*

An agricultural or veterinary chemical must be registered, or exempted from registration, before it can be used in New Zealand.<sup>4</sup> The ACVM Group within the NZFSA is responsible for registering such chemicals.<sup>5</sup> The NZFSA can refuse to register a chemical where the application fails to meet the criteria set out in the *Agricultural Compounds and Veterinary Medicines Act 1997* (NZ) (table 13.1). The NZFSA will, in certain circumstances, consider APVMA assessments in its evaluation of an application (box 13.4).

**Box 13.4 NZFSA registration by reference to APVMA registration — veterinary chemicals**

The NZFSA has committed to using APVMA reports as part of its assessment process for certain applications to register a veterinary medicine (veterinary chemical). The NZFSA hopes this initiative will reduce the costs associated with registering veterinary chemicals in New Zealand.

Although the NZFSA will use APVMA assessments as the baseline for its consideration of applications, the conditions of registration and labelling requirements will still be determined by the NZFSA in light of what is appropriate for New Zealand.

Subsequent changes to the APVMA's registration of a chemical will not necessarily affect the New Zealand registration. However, if the change or withdrawal is prompted by an issue with the medicine, NZFSA may require the chemical to be reassessed.

Source: NZFSA (2008a).

---

<sup>4</sup> Also, a new chemical cannot be registered until it is approved by the Environment Risk Management Agency under *Hazardous Substances and New Organisms Act 1996* (NZ). This is, however, a separate (non-food related) process to the matters under study in this report.

<sup>5</sup> The ACVM Group is also responsible for regulating the importation, manufacture, sale and use of these chemicals in New Zealand.

---

As part of assessing an application for registration, the NZFSA considers the chemical residues that may be present in the foods produced using the chemical according to good agricultural (or veterinary) practice. Like the APVMA, the NZFSA undertakes a toxicology evaluation and considers dietary risks as part of the registration assessment processes and for the purposes of determining the appropriate MRLs (which is part of the registration assessment process).

### *Specifying the MRLs in food regulation — Australia and New Zealand*

In Australia, consistent with the *Food Standards Australia New Zealand Act 1991* (Cwlth) FSANZ considers MRL additions and amendments in one of two ways:

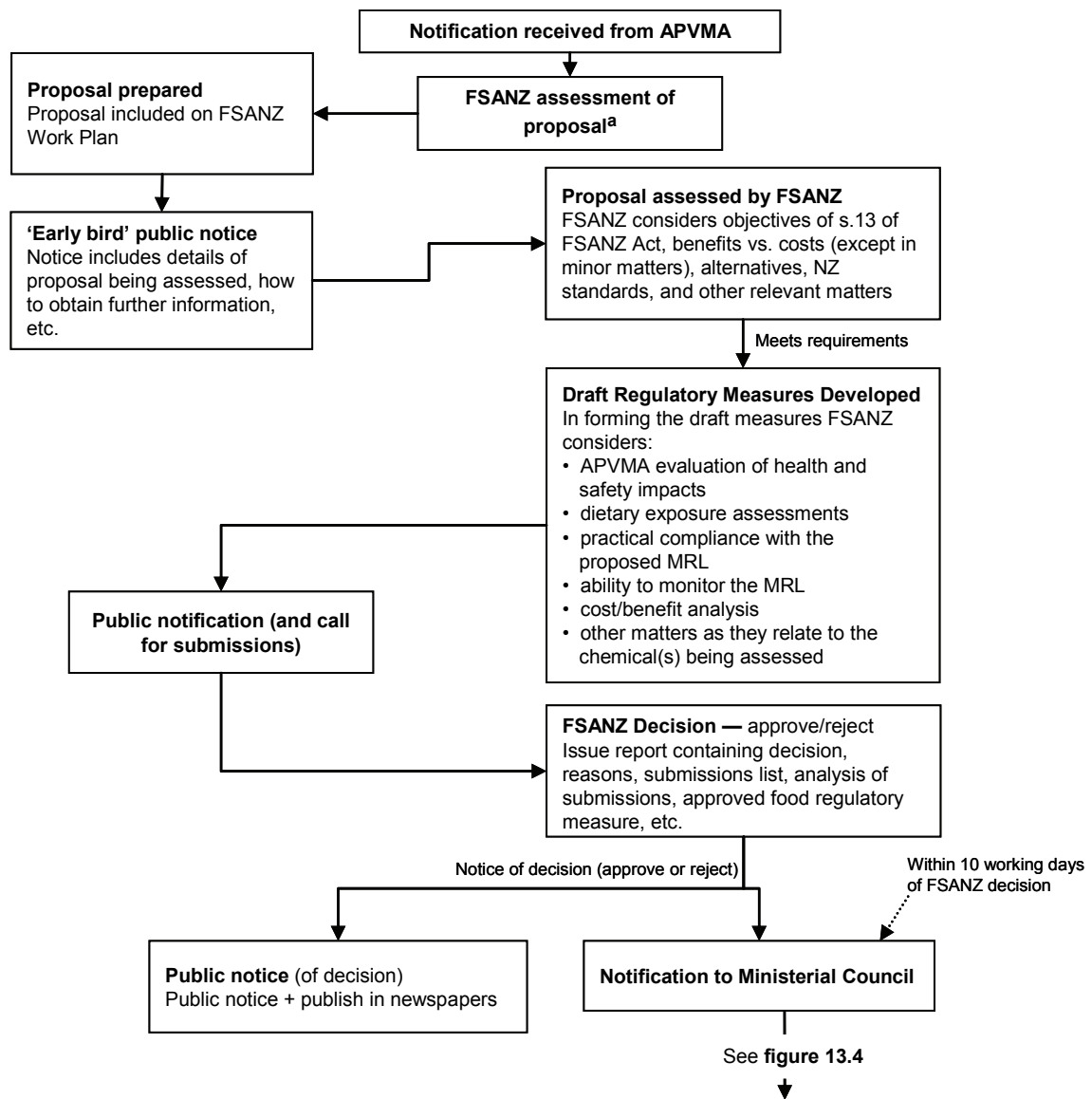
- a *proposal* (under section 12AA or subdivision H) — raised by FSANZ itself. Proposals predominantly originate from an APVMA notification of the registration of a new chemical or review of an existing MRL (the assessment process is illustrated in figure 13.2), but can arise for a number of reasons (such as facilitating trade). The majority of MRL amendments are progressed as proposals
- an *application* (under section 12) — a specific request made by an individual or company (the assessment process is illustrated in figure 13.3).

Once FSANZ has made its decision on an proposal/application, the proposal/application passes to the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) for consideration (figure 13.4). In contrast, New Zealand's comparatively more compact and timely process is illustrated in figure 13.5.

Australia and New Zealand also differ in their treatment of food containing a chemical residue for which an MRL has *not* been specified. In Australia, if Standard 1.4.2 does not list an MRL for a chemical in a specific food, then there must be no detectable residues of that chemical in that food — the same approach is adopted in the Codex MRLs. In contrast, New Zealand has a 'default' MRL of 0.1mg/kg for any chemicals not listed in the *New Zealand (Maximum Residue Limits of Agricultural Compounds) Food Standards 2008* and, for imported foods, the Codex MRLs can be applied.

Figure 13.2 **FSANZ process for a *proposal* to amend an MRL (notification by the APVMA)**

Assessed under the 'general procedure'

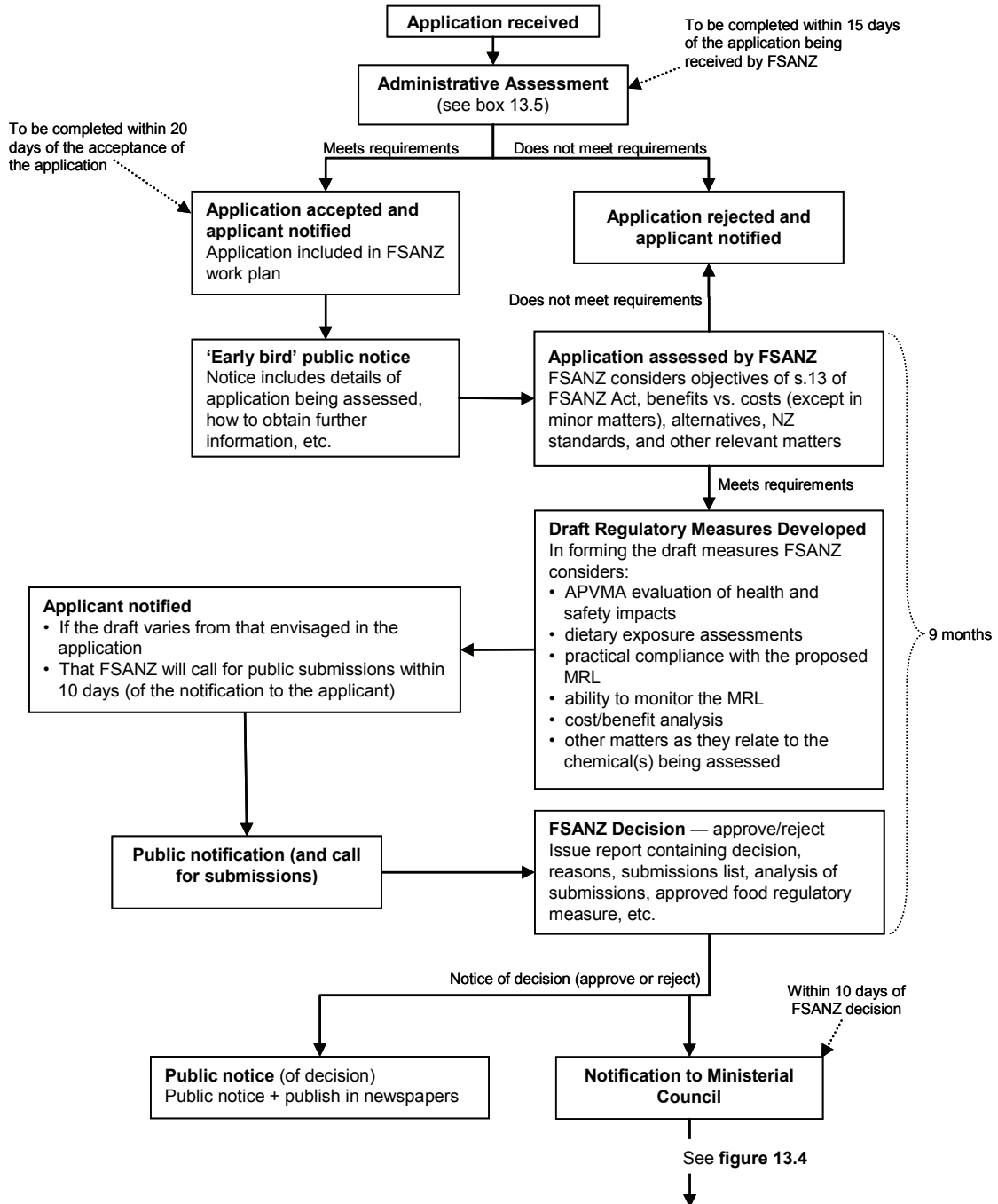


<sup>a</sup> This assessment is similar in nature to the Administrative Assessment outlined in box 13.5, but is not a mandated part of the 'proposal' process.

Source: Based on FSANZ (2008b).

**Figure 13.3 FSANZ process for an application to amend an MRL**

Assessed under the 'general procedure'



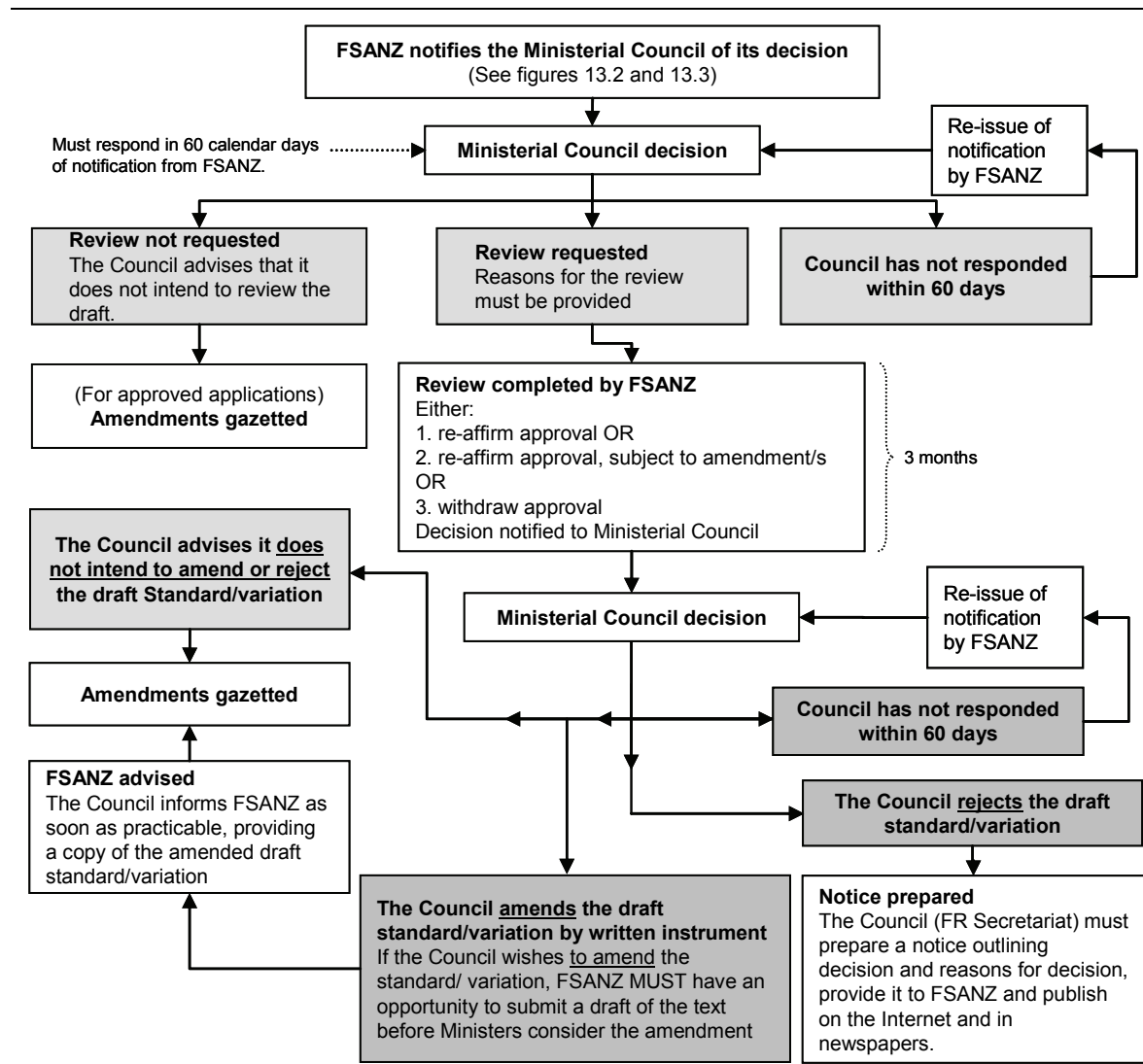
Source: Based on FSANZ (2008b).

### Box 13.5 FSANZ Administrative Assessment

The Administrative Assessment determines whether an application will be accepted or rejected by FSANZ based on:

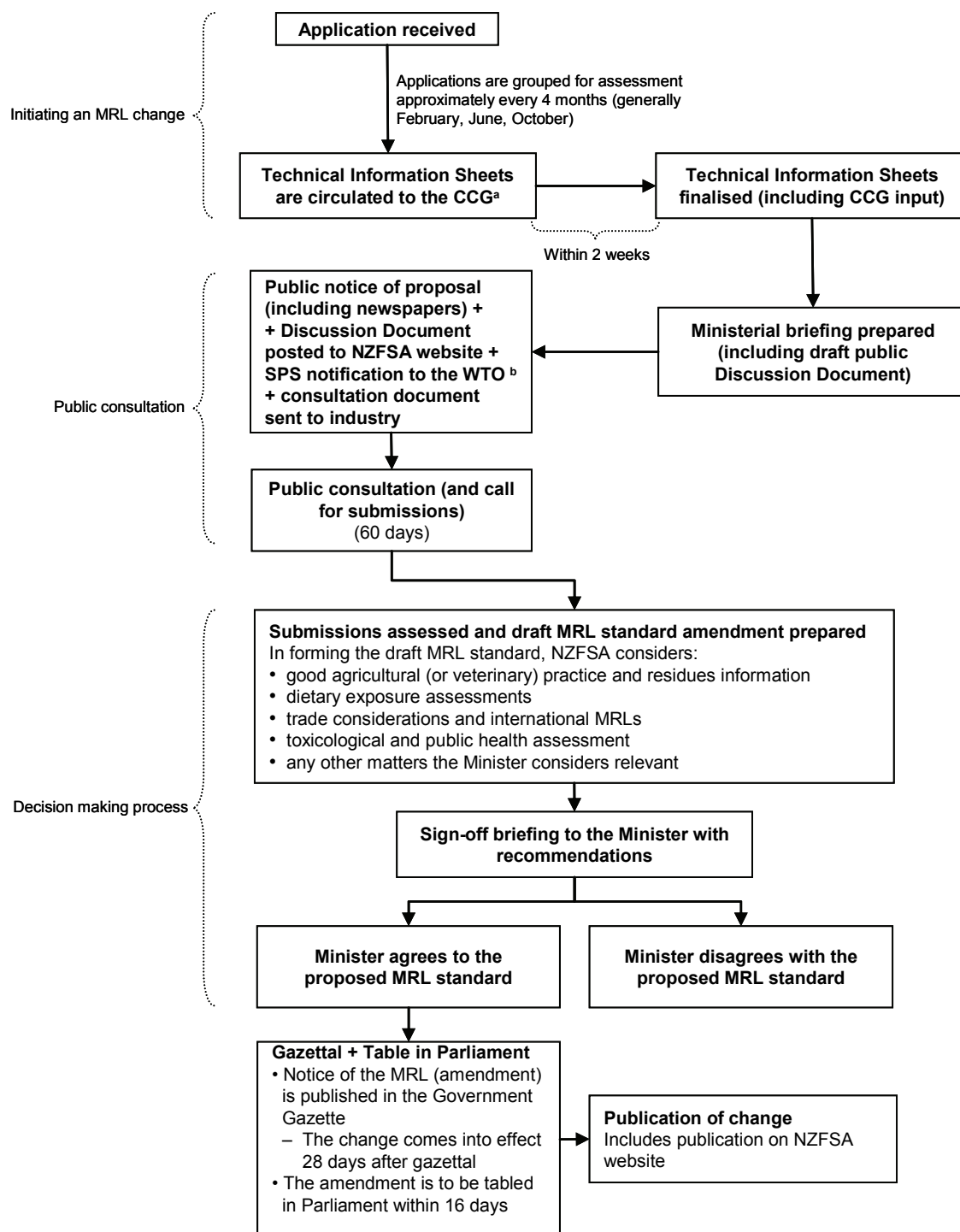
- whether the application meets the minimum application requirements
- whether the application relates to a matter that may be developed as a food regulatory measure, or that warrants the variation of a food regulatory measure
- whether the application is so similar to a previous proposal or application that it ought to be rejected
- any other relevant matter.

Figure 13.4 FSANZ process for a proposal/application to amend an MRL — ANZFRMC decision



Source: Based on FSANZ (2008b).

Figure 13.5 NZFSA process for specifying MRL



<sup>a</sup> CCG Chemicals Coordination Group. <sup>b</sup> SPS World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures.

Source: Based on NZFSA (2008b).

---

*Assessing MRL applications — statutory timeframes and application processes*

The binding statutory time limits within the Australian regime (table 13.3) can benefit Australian businesses by providing them with a degree of certainty in respect to the application process (PC 2008d). However, FSANZ’s nine month time limit outlined in table 13.3 applies to only:

- applications considered under FSANZ’s general procedure (applications under the major procedure have a 12 month time limit)
- proposals arising from APVMA notifications made under s. 13A of ‘Agvet Code’ (the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 (Cwlth))

Although the time limit came into effect on 1 October 2007, none of the MRL amendments considered by FSANZ since that time have been subject to the nine month time limit. In the first instance, this is because none of the MRL amendments considered have related to applications. Secondly, even though some of the MRL proposals originated from the APVMA, they do not meet the criteria of s. 13A of the Agvet Code.<sup>6</sup>

**Table 13.3 MRL applications — timeframes and application process**  
As at June 2009

	<i>Australia (FSANZ)</i>	<i>New Zealand (NZFSA)</i>
Statutory time limit (from lodgement of application to the final decision)		No statutory time limits
<i>Administrative assessment</i>	15 business days	
<i>Application assessment</i>	9 months <sup>a</sup>	
Ability to ‘stop the clock’ in respect to statutory time limits during the assessment process	Yes	na — no statutory time limits
Ability to amend the information/assessment requirements during the assessment process	No	No

na not applicable. <sup>a</sup> Relates to applications considered under FSANZ’s general procedure and proposals arising from APVMA notifications made under s. 13A of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth). Time is from the commencement of assessment (or receipt of fees payable) to the date of approval of the draft food regulatory measure.

Source: Productivity Commission survey of FSANZ and NZFSA (unpublished).

---

<sup>6</sup> For example, s. 13A of the Agvet Code relates to ‘chemical products in relation to which an application for **registration** is made’ (emphasis added). Many of the amendments sought by the APVMA over the period 1 October 2007 relate to new MRLs arising from permits (rather than registrations) — as such, these amendments are not subject to s.13A and, in turn, the nine month time limit.

---

Even when the statutory time limit applies in Australia, the degree of certainty afforded to business is reduced somewhat by:

- FSANZ's ability to 'stop the clock' during the assessment process. FSANZ can stop the clock:
  - if FSANZ requests the applicant provide additional information to facilitate the assessment of the application
  - if a charge due to FSANZ under the application process remains unpaid
  - whenever the application is the subject of review by the Administrative Appeals Tribunal
  - if the ANZFRMC advises it is formulating a policy relevant to the application
- the 'clock' does not start when the proposal/application is received, but rather when FSANZ commences its assessment of the proposal/application.

#### *Duplication in Australia's processes for registering chemicals and specifying MRLs*

FSANZ has never rejected an MRL recommended to it by the APVMA (PC 2008b and sub. 16), but the process of including these MRLs within the ANZFS Code can take many months — Horticulture Australia Ltd estimates the delay will be between 11–20 months for around 120 MRLs arising from around 50 APVMA permits issued by the between August 2008 and July 2009 (sub. 19).<sup>7</sup> During this time, even though the chemical is registered for use and an MRL set by the APVMA (and recommended to FSANZ), a food containing any residue at all from that chemical would breach the ANZFS Code (and so cannot be sold) as the MRL for that food/chemical combination has not been listed in Standard 1.4.2. In other words, it is 'legal to apply the pesticide, but illegal to have a residue in the crop once harvested' (sub. 19, p. 2).

The burdens on Australian businesses caused by the duplication in the processes of the APVMA and FSANZ, and associated time delays, have been canvassed in a number of previous Commission reports (see PC 2007a, PC 2008a and PC 2008b) and were raised by participants in this study (for example, subs. 9, 13 and 19). The findings of previous Commission reports are not revisited here as the Council of Australian Governments (COAG) has agreed to have the MRLs set by the APVMA promptly recognised by FSANZ in Standard 1.4.2 (COAG 2008). COAG agreed this reform was to have come into effect by December 2008. However, as at November 2009, the reform was yet to be implemented by the Commonwealth

---

<sup>7</sup> The 11–20 month timeframe assumes the ANZFRMC does not request a review of FSANZ's decision. If such a review were requested, these timeframes would be extended.

---

Government. As these issues relate to national processes the associated burden on Australian businesses will be consistent across all Australian jurisdictions. However, a comparison of the Australian and New Zealand processes can provide useful information on areas of further investigation for reducing the unnecessary burdens in both countries.

As responsibility for the registration of new chemicals and specifying the MRLs in food regulation rests with one body in New Zealand (the NZFSA), New Zealand businesses do not face comparable burdens from duplicated and overlapping regulatory processes to those arising for Australian businesses. Further, in New Zealand, the establishment of the MRLs applying to food is a prerequisite to the registration of a chemical. Where a new chemical requires an MRL in excess of the default MRL (0.1mg/kg), the registration of that chemical is placed ‘on hold’ until the MRL has been gazetted. For chemicals with undetectable residues or residues below the default MRL (0.1mg/kg), there is no delay in the registration of the chemical as the use of the product will be supported by the default MRL until the specific MRL can be promulgated. Accordingly, New Zealand businesses, when compared to Australian businesses, have greater certainty as to how and when they can use a chemical once it is registered.

### **Comparison of Australian and New Zealand processes**

A comparison of Australian and New Zealand regimes should provide insights for both countries on their processes for establishing and varying the MRLs in food regulation (as distinct from the combination of the processes of approving chemicals and specifying MRLs which was the subject of PC 2007a, PC 2008a and PC 2008b).

FSANZ can assess a proposal or application to amend an MRL under three ‘procedures’: ‘minor’; ‘general’; and, ‘major’. MRLs are typically assessed under the general procedure and, between 1 July 2007 and 30 June 2009, the MRL proposals considered were all assessed under the general procedure. As a consequence, the observations that follow are based on the general procedure, with caveats raised where the use of the ‘major procedure’ (the more rigorous approach used for complex matters) would produce materially different outcomes.

#### *Fees and charges*

No fees or charges were payable to either NZFSA or FSANZ for the MRLs specified between 1 July 2007 and 30 June 2009. More generally, the NZFSA does not charge a fee to create or amend an MRL, while FSANZ does not charge fees for

proposals. FSANZ may, however, charge a fee for an application to establish or amend an MRL within the ANZFS Code.

FSANZ may only charge a fee where an ‘exclusive capturable commercial benefit’ (box 13.6) arises for the applicant or the applicant wishes to expedite consideration of the application (rather than have the application proceed according to the anticipated timeframes established as part of the Administrative Assessment — box 13.5). The fee payable is determined as part of the Administrative Assessment and after considering the likely complexity of assessment. The fee (table 13.4) cannot be increased, even if the actual assessment takes longer than anticipated and exceeds the threshold on which the fee is based. The applicant may, however, be eligible for a partial reimbursement of the fee where the actual assessment takes less time than anticipated and falls into a different fee category as a result.

### Box 13.6 Exclusive Capturable Commercial Benefit

Where an application is likely to result in an amendment to the ANZFS Code that provides exclusive benefits to the applicant, the application is considered to confer an ‘exclusive capturable commercial benefit’ (ECCB) and the applicant is required to pay the full cost of processing his or her application.

The *Food Standards Australia New Zealand Act 1991* (Cwlth) considers an ECCB is conferred upon a person (the ‘applicant’) who applies for the development or variation of a food standard where:

- the applicant can be identified as a person that may derive a financial gain from the standard or variation resulting from the application
- any other unrelated persons would require the agreement of the applicant in order to benefit financially from the approval of the application.

Source: FSANZ (2008b).

Table 13.4 **FSANZ fees**

As at June 2009

	Hours <sup>a</sup>	Fee
General procedure	Up to 500 hours	\$53 500
	Up to 850 hours	\$90 950
Major procedure	Up to 1 050 hours	\$112 350
	Over 1 050 hours	\$112 350 + \$107 per hour

<sup>a</sup> Determined as part of the Administrative Assessment.

Source: FSANZ (2008b).

As MRL applications normally proceed under the general procedure, they would attract a fee of either \$53 500 or \$90 950 (table 13.4). Under the general procedure, the fee becomes payable within 20 business days of FSANZ notifying the applicant that the application has been accepted and the procedure that will be followed in assessing the application.

### *Assessing MRL applications — public consultation and transparency*

The FSANZ assessment process should contribute to reduced regulatory burdens for Australian businesses in the longer term as, unlike the NZFSA process, it includes the consideration of business compliance costs (table 13.5). However, the NZFSA considers the more general costs affecting business, such as unnecessary restrictions on trade, as part of their chemical registration processes (the APVMA considers similar matters in its chemical registration process).

While both FSANZ and NZFSA engage in public consultation, their different approaches have different benefits. The FSANZ approach of consulting on the proposed MRL standard allows it to get feedback on its draft approach and allows those making submissions to do so in light of the evidence FSANZ has compiled. In contrast, the NZFSA approach of consulting prior to forming a draft standard allows it to become familiar with the issues raised by submissions earlier in the assessment process, but without those submissions necessarily being informed by the same evidence as is available under FSANZ’s consultation process. FSANZ’s publication of final assessment documentation also makes for a more transparent process compared to that of the NZFSA.

**Table 13.5 MRL applications — transparency and considerations**

As at June 2009

	<i>Australia (FSANZ)</i>	<i>New Zealand (NZFSA)</i>
Applications notified to the public	Yes	Yes
Public consultation period (pre-draft MRL standard)	na <sup>a</sup>	60 days
Public consultation period (post-draft MRL standard)	28–42 days	na
Assessment process includes an assessment of the compliance costs for business	Yes	No
Final analysis of application(s) made public	Yes <sup>b</sup>	No

**na** not applicable. <sup>a</sup> For the general procedure. Pre-draft consultation may occur for applications assessed under the major procedure. <sup>b</sup> Any reports resulting from review requests by the Ministerial Council are also made public.

Source: Productivity Commission survey of FSANZ and NZFSA (unpublished).

---

### *MRL assessments completed*

Between 1 July 2007 and 30 June 2009, all MRLs assessments completed by FSANZ were proposals arising from notifications from the APVMA or industry requests for MRLs for various foods (including prawns, tea, cherries, honey and grapes — sub. 16), while those completed by the NZFSA were the result of either chemical product registrations or NZFSA initiated reviews.

Both countries assess MRLs in ‘batches’ meaning there may be some time between when a proposal/application is received and the consideration of that proposal/application commences. While New Zealand has committed to grouping applications for assessment approximately every four months (NZFSA 2008b), no such formal commitment exists in Australia. The Australian process is more adhoc with FSANZ

[preparing] approximately three to four proposals a year for MRLs to minimise the time taken for MRLs to be considered. ... The scope, number and timing of proposals is dependent on when MRLs are notified to FSANZ by the APVMA and comments from public consultation. These notifications and comments are not within the control of FSANZ and so timing will always be uncertain, although FSANZ undertakes detailed planning for the Proposals once it receives the notifications from the APVMA. (sub. 16, pp. 2-3)

The two countries also differed in the time elapsed between receiving and deciding MRL proposals/applications for the period 2007–09:

- FSANZ took 8–10 months in 2008-09 and 4–12 months in 2007-08 to decide Australian MRL proposals/applications (table 13.6 and figure 13.6)
- the NZFSA took between 4 and 8 months in 2008-09 and between 4 and 9 months in 2007-08 to decide every application in New Zealand (table 13.7 and figure 13.6).

In 2008-09, FSANZ decided MRLs for 27 chemicals, amending 123 MRLs in the process (76 chemicals and 191 MRLs in 2007-08). Over the same period, the NZFSA decided MRLs for 40 chemicals, amending 57 MRLs in the process (44 chemicals and 118 MRLs in 2007-08).

Following the regulator’s decision/recommendation, the proposal/application is still subject to review by the ANZFRMC in Australia (figure 13.4) and the relevant Minister in New Zealand (figure 13.5). Including these processes, the average time from the regulator’s decision to gazettal was around 2–3 months in Australia and two weeks in New Zealand.

**Table 13.6 FSANZ assessments of MRLs**

MRLs decided (by FSANZ) between 1 July 2007 to 30 June 2009

Residue	1 July 2007 to 30 June 2008						1 July 2008 to 30 June 2009
	Paradichloro-benzene in honey <sup>a</sup>	Various	Oxytetracycline fish	Various	Dimetridazole (antibiotic)	Various	Various
Proposal/Application No.	A602	A607	A608	A610	A612	M1001	M1002
Application type	Add an MRL	Add, modify and delete MRLs	Modify an MRL	Add, modify and delete MRLs	Modify MRL	Add, modify and delete MRLs	Add, modify and delete MRLs
Date application(s) received <sup>b</sup>	21/3/2007	15/5/2007 and 7/6/2007	16/7/2007	8/8/2007 and 20/8/2007	20/08/2007	17/10/2007, 22/11/2007, 18/1/2008 and 5/2/2008	1/1/2008, 19/2/2008 and 6/3/2008
Draft assessment <sup>c</sup>	12/12/2007	12/12/2007	26/7/2007	12/12/2007	12/12/2007	6/3/2008	1/8/2008
Period for public consultation (pre-draft)	na	na	na	na	na	na	na
Period for public consultation (post-draft)	56 days	56 days	42 days	56 days	56 days	28 days	35 days
Board Approval	6/3/2008	22/5/2008	20/12/2007	22/5/2008	22/05/2008	22/05/2008	5/11/2008
Final Assessment Report <sup>d</sup> released	19/3/2008	4/6/2008	12/2/2008	4/6/2008	4/06/2008	4/06/2008	11/11/2008
Ministerial Council decision	No review requested	No review requested	No review requested	No review requested	No review requested	No review requested	No review requested
Decision gazetted	15/5/2008	14/8/2008	13/3/2008	14/8/2008	14/08/2008	14/08/2008	5/1/2009
Number of chemicals assessed	1	30	1	14	1	29	27
Number of MRLs amended	1	51	2	49	5	83	123

na not applicable. <sup>a</sup> Application for an Extraneous Residue Limits. <sup>b</sup> Notifications were received from the APVMA on these dates. <sup>c</sup> Referred to as an 'Assessment Report' since October 2007. <sup>d</sup> Referred to as an 'Approval Report' since October 2007.

Sources: FSANZ (2008c); FSANZ (2008d); FSANZ (2008e); FSANZ (2008f); FSANZ (2008g); FSANZ (2008h); FSANZ (2008j); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

**Table 13.7 NZFSA assessments of MRLs**

MRLs decided (by the Minister) between 1 July 2007 to 30 June 2009

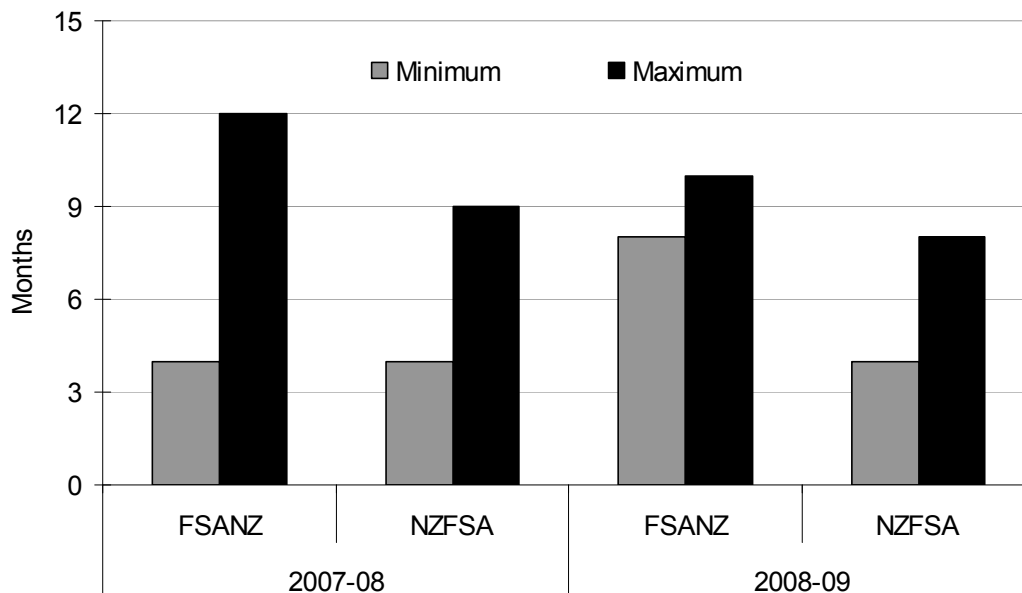
MRL Amendment No.	1 July 2007 to 30 June 2008			1 July 2008 to 30 June 2009		
	1/2007	2/2007	2008 consolidation	1/2008	2/2008	2009 consolidation
Chemical compounds	Various	Various	Various	Various	Various	Various
Type of application(s)	Add and modify MRLs	Add and modify MRLs. Provide exemptions	Add, modify and delete MRLs. Provide exemptions	Add and modify MRLs. Provide exemptions	Add, modify and delete MRLs	Add, modify and delete MRLs. Provide exemptions
Number of applications	11	11	22	11	10	19
Date application(s) received	4 <sup>th</sup> quarter 2006 and 1 <sup>st</sup> quarter 2007	2 <sup>nd</sup> and 3 <sup>rd</sup> quarter 2007	3 <sup>rd</sup> and 4 <sup>th</sup> quarter 2007	1 <sup>st</sup> and 2 <sup>nd</sup> quarter 2008	2 <sup>nd</sup> and 3 <sup>rd</sup> quarter 2008	4 <sup>th</sup> quarter 2008 and 1 <sup>st</sup> quarter 2009
Date Discussion Paper on application(s) publicly released	10/4/2007	10/8/2007	20/12/2007	30/5/2008	14/8/2008	10/3/2009
Period for public consultation (pre-draft)	63 days	61 days	71 days <sup>a</sup>	62 days	62 days	63 days
Period for public consultation (post-draft)	na	na	na	na	na	na
Date recommendation provided to the Minister	22/6/2007	17/10/2007	19/3/2008	1/9/2008	30/10/2008	29/5/2009
Date of Minister's decision	6/7/2007	27/10/2007	25/3/2008	8/9/2008	5/11/2008	2/6/2009
Minister's decision	Approved without change	Approved without change	Approved without change	Approved without change	Approved with amendments <sup>b</sup>	Approved without change
Date decision gazetted	07/07/2007	01/11/2007	03/04/2007	11/9/2008	13/11/2008	11/6/2009
Number of chemical compounds assessed	11	11	22	11	10	19
Number of MRLs amended	60 inserted or amended	29 inserted or amended	18 inserted or amended. 11 deleted	13 inserted or amended	22 inserted or amended. 7 deleted	17 inserted or amended. 8 deleted
Number of chemicals exempted		2	6	1		5

na not applicable. <sup>a</sup> 61 days with an extension to consider holiday period of 24 December 2007 to 2 January 2008. <sup>b</sup> Residue for Pyraclostrobin in grapes set at 3mg/kg (2mg/kg was recommended), residue for Boscalid in grapes set at 5mg/kg (3mg/kg was recommended).

Sources: NZFSA (2007a); NZFSA (2007b); NZFSA (2008e); NZFSA (2008f); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

**Figure 13.6 Time taken to decide MRL proposals/applications**

Regulator processes from figures 13.2 (FSANZ) and 13.5 (NZFSA)



Sources: FSANZ (2008c); FSANZ (2008d); FSANZ (2008e); FSANZ (2008f); FSANZ (2008g); FSANZ (2008h); FSANZ (2008j); NZFSA (2007a); NZFSA (2007b); NZFSA (2008e); NZFSA (2008f); Productivity Commission surveys of FSANZ and NZFSA (unpublished).

### *Assessing MRL applications — appeals and review process*

Mechanisms for businesses to appeal regulator decisions should lead to improved ‘final decisions’ for business (PC 2008d). Accordingly, FSANZ’s approach (table 13.8) should produce better outcomes for business and, in turn, lower unnecessary regulatory burdens. The public appeals processes provided for under the Australian regime, while serving the broader community interest, may frustrate business by creating uncertainty in regard to the finality of FSANZ’s decisions. In the absence of a formal appeals processes in New Zealand, businesses (or others) seeking an amended decision must pursue other avenues (such as lodging a new MRL application with the NZFSA).

Both FSANZ and NZFSA review existing MRLs for their ongoing suitability (table 13.8) in view of factors such as established usage patterns. In addition, the NZFSA also systematically removes MRLs five years after the cancellation or withdrawal of supply of the last product containing the relevant chemical. Such an approach assists in keeping the stock of regulation in check and relevant — more compact and relevant regulation should contribute to a lower burden on the New Zealand businesses needing to comply with it.

**Table 13.8 Appeals and review process**

July 2007– June 2009

	<i>Australia (FSANZ)</i>	<i>New Zealand (NZFSA)</i>
Mechanism available to applicant to appeal the decision	AAT <sup>a</sup> within 28 days of notification of the rejection	No mechanism <sup>b</sup>
Mechanism available to the public to appeal the decision	AAT <sup>a</sup> within 28 days of notification of abandonment (proposals only)	No mechanism <sup>b</sup>
Number of decisions appealed	Nil (2007-08) Nil (2008-09)	na (2007-08) na (2008-09)
Number of decisions amended on appeal (2007–09)	–	–
Periodic review of MRLs for their ongoing suitability	Yes	Yes

na not applicable. <sup>a</sup> Administrative Appeals Tribunal (AAT). <sup>b</sup> Once the Minister's decision has been made, a member of the public (or the applicant) could lodge a new application to amend the MRL in question.

Sources: Productivity Commission survey of FSANZ and NZFSA (unpublished).

### 13.3 Business compliance with MRLs

In its submission, CHOICE highlights the absence of a consistent mandatory MRL enforcement program across Australia,<sup>8</sup> noting:

There is no consistent enforcement program across the states and territories that assesses the level of compliance with the MRLs in both imported and locally produced foods. The level of monitoring varies from state to state. At the time of publication of the CHOICE article (April 2006):

- ACT and Tasmania did no testing at all
- The NSW Department of Primary Industry was funding a new program to test local produce but not at retail outlets
- The NT Department of Primary Industry tested locally grown produce only
- The Queensland Department of Primary Industry tested samples from suppliers and occasionally farmers markets, but not at retail outlets
- South Australia tested locally produced fruit and vegetables in 2003 but [had not] done any subsequent testing
- Victoria regularly tests locally produced fruit and vegetables but does not sample retail outlets
- The WA Department of Health had an ongoing testing program, surveying fruit and vegetables every two to five years, including samples from retail outlets. (sub. 7, p. 6)

<sup>8</sup> At a national level there are voluntary testing programs run by government (the National Residue Survey) and the private sector (FreshTest) — both of which are discussed below.

---

Concern over the burden on business due to the inconsistent and, at times, duplicative Australian enforcement regime were also raised by other stakeholders. As there is only one regulator (the NZFSA) responsible for MRL enforcement activities in New Zealand, no such concerns were raised regarding the New Zealand regime.<sup>9</sup>

Much of the debate on ‘MRL enforcement’ has focused on whether there is sufficient testing of food for chemical residues — both in general and, specifically, at the point of retail sale. However, as outlined in box 13.7, such testing may not necessarily be the most effective enforcement strategy. Also, such a focus on testing does not take into account the other regulatory measures related to agricultural and veterinary chemicals that contribute toward MRL compliance. These ‘other regulatory measures’ are raised, as applicable, in the following analysis of MRL compliance and enforcement.

**Box 13.7 The effectiveness of testing for chemical residues**

Testing at the point of retail sale may not be the most effective enforcement approach as the further the testing occurs from the point of production the greater the impediments to tracing the food to its point of production and the likely cause of the MRL being breached. Where the food tested can be traced back to the point of production and, more importantly, the actions causing the breach of the MRL, all affected food can be recalled. Where the food cannot be traced, only that food tested can be removed from sale, leaving a potentially large supply of noncompliant food available for sale.

The absence of testing in a jurisdiction such as the ACT, which produces little of its own food, may be justified on the grounds that to do so may well duplicate the actions of those jurisdictions where the food was produced — thereby increasing the regulatory burden on business. Testing in such circumstances may also be inefficient if the regulator is unable to trace the food breaching an MRL back to its point of production.

## **Duplication and inconsistencies in enforcement — Australia**

### *Australia’s enforcement framework*

While local councils are responsible for enforcing the ANZFS Code in most jurisdictions and many local councils undertake food sampling for microbiological testing, very few (if any) local councils undertake proactive food sampling to test

---

<sup>9</sup> Some minor issues of internal consistency within NZFSA were, however, raised with the Commission during the initial rounds of consultation.

---

for MRL compliance. This leaves the state and territory core food safety regulators responsible for their respective Food Acts to enforce compliance with the MRLs in the ANZFS Code (table 13.9). The primary production regulators (table 13.9) can also undertake some enforcement/compliance activities in relation to MRLs and agricultural and veterinary chemicals. For example, Safe Food Production Queensland requires egg growers to maintain sufficient records to verify their chicken feed is free from chemical contamination and to test their eggs annually for organochlorine and organophosphorous pesticides.

A significant share of the MRL compliance testing of the states and territories, including most of the programs listed in the CHOICE submission quoted above, is undertaken by the respective state and territory primary industry departments (or equivalent — see table 13.9).<sup>10</sup> In doing so, many of the primary industry departments are enforcing a ‘chemical control-of-use’ act (or similar act) that references the MRLs within the APVMA’s MRL Standard rather than those contained in Standard 1.4.2 of the ANZFS Code.<sup>11</sup> New South Wales (veterinary medicines only), Queensland, Western Australia and the Northern Territory (agricultural chemicals only) are among those that reference the APVMA’s MRL Standard for the monitoring of the use of agricultural and veterinary chemicals (APVMA 2008a).

Those primary industry departments undertaking MRL testing do so to determine whether the requirements within their chemical control-of-use acts, such as withholding periods, have been complied with. A breach of an MRL is followed up to determine the cause of the breach and, if it relates to a breach of a requirement within the chemical control-of-use act, appropriate enforcement action is taken.<sup>12</sup> Therefore, the testing of the primary industry departments has a different focus (and purpose) to that of the state and territory core food safety regulators which are focused on compliance with the ANZFS Code and prohibiting the sale of any food exceeding an MRL.

---

<sup>10</sup> The New South Wales Department of Environment and Climate Change undertakes some testing for MRL compliance.

<sup>11</sup> These MRLs will generally only differ where the APVMA has registered a chemical for which FSANZ is yet to establish an MRL in Standard 1.4.2.

<sup>12</sup> If the breach relates to food that has been made available for sale, the core food safety regulators would normally be notified of the breach by the primary industry department.

**Table 13.9 State and territory regulators responsible for some aspect of enforcing MRLs**

As at June 2009

	<i>Area of regulation</i>		
	<i>Food safety regulation — Food Act</i>	<i>Food safety regulation — Primary production and processing</i>	<i>Chemical control-of-use act</i>
NSW	NSW Food Authority <sup>a</sup>		Department of Primary Industries Department of Environment, Climate Change and Water
Vic	Department of Health <sup>b</sup>	PrimeSafe Dairy Food Safety Victoria	Department of Primary Industries
Qld	Queensland Health	Safe Food Production Queensland	Queensland Primary Industries and Fisheries <sup>c</sup>
SA	Department of Health	Primary Industries and Resources South Australia <sup>a</sup> Dairy Authority of South Australia	
WA	Department of Health		Department of Agriculture and Food <sup>a</sup>
Tas	Department of Health and Human Services	Department of Primary Industries, Parks, Water and Environment <sup>a</sup> Tasmanian Dairy Industry Authority	
NT	Department of Health and Families	Department of Regional Development, Primary Industry, Fisheries and Resources <sup>a</sup>	
ACT	ACT Health		Department of the Environment, Climate Change, Energy and Water Territory and Municipal Services

<sup>a</sup> Different parts of the department/agency may be responsible for the different areas of regulation. <sup>b</sup> Responsibility for food safety regulation passed to the newly created Department of Health from the Department of Human Services (Food Safety Unit) in August 2009. <sup>c</sup> Part of the Department of Employment, Economic Development and Innovation.

The primary industry departments of the states and territories, and the Department of Environment and Climate Change in New South Wales, also enforce a number of regulatory requirements in relation to the use of agricultural and veterinary chemicals. Depending on the jurisdiction, these requirements can include matters such as:

- withholding periods
- licensing of commercial pest control operators and ground and aerial spray operators
- keeping records of chemical use
- safe use of chemicals, including training for chemical users, the use of codes of practice, spraydrift guidelines and other user awareness initiatives
- notifying neighbours of the application of chemicals.

---

At the Commonwealth level, the Department of Agriculture, Fisheries and Forestry (separately through AQIS<sup>13</sup> and the National Residue Survey (NRS — box 13.8) is also involved in Australia's MRL compliance testing.

### **Box 13.8 National Residue Survey**

The National Residue Survey (NRS) monitors the residues of agricultural and veterinary chemicals (and environmental contaminants) in Australian produced food. It is undertaken by the NRS unit within the Commonwealth Department of Agriculture, Fisheries and Forestry.

The NRS operates on a mix of industry and Government funding — the cost of testing is largely funded by levies on industry for the commodities tested, while Commonwealth funding covers the cost of the advice on residues provided to the Government and participation in national and international food regulation committees.

While participation in the NRS is voluntary, businesses/industries participate in order to meet access requirements for domestic and/or export markets. The NRS facilitates this by providing a structured residue testing service recognised as being risk-based and technically sound.

#### **The random sampling program**

In the first instance, the program assesses residues against the MRLs set out in Standard 1.4.2 of the ANZFS Code. However, where an MRL has been proposed to FSANZ by the APVMA, but is not yet included in the ANZFS Code, the NRS will assess compliance against the MRL specified by the APVMA.

In 2007-2008, the NRS random sampling program covered 25 animal-derived products (such as meat, honey, eggs and fish) and 25 plant commodities (including five horticultural products) — collecting and testing around 20 000 samples in the process. The food/chemical combinations analysed are determined with industry and on the basis of risk evaluations.

Box 13.9 details some of the other programs (aside from the random sampling program) within the NRS that form part of the monitoring framework for agricultural and veterinary chemicals.

*Sources:* DAFF (2008b); DAFF (2008c); Dagg et al. (2006); AQIS pers. comm. 24 November 2009.

---

<sup>13</sup> Testing imported food for compliance with the MRLs contained in the ANZFS Code forms part of AQIS's Imported Food Inspection Service program (IFIS — see Appendix C (C.1) for a description of the IFIS).

---

### Box 13.9 Other programs within the National Residue Survey

In addition, to the random monitoring programs, the NRS conducts the following targeted programs:

- the **Targeted Antibacterial Residue Testing Program** — an antibacterial residue testing program applying to all animals slaughtered at export abattoirs. It targets livestock suspected by on-plant veterinarians of violative levels of antibacterial residues.
- the **National Organochlorine Residue Management program** — established to manage the risks of persistent organochlorine contaminants being detected in beef products. The program is supported jointly by the Cattle Council of Australia, the Australian Lot Feeders Association and the Department of Primary Industries (or equivalent) in Queensland, New South Wales, Western Australia, Victoria and South Australia.
- the **National Antibacterial Residue Minimisation Program** — a joint industry/state/Commonwealth initiative aimed at increasing the awareness of producers, processors and other industry groups of the risk to trade associated with the detection of antibacterial residues above the MRLs for meat. The program focuses on the testing of a variety of cattle from high risk categories including bobby calves, cull cattle, especially dairy cows, hospital penned feedlot cattle, bulls and, in particular 'suspect cattle'.

Sources: DAFF (2008b); Dagg et al. (2006); AQIS pers. comm. 24 November 2009.

The NRS contributes to the compliance activities of the states and territories as, where a residue in excess of an MRL is identified, the relevant state/territory 'chemical control-of-use' regulator (usually the department of primary industry) is notified. It is then up to that regulator what enforcement action they take. The control-of-use regulator may notify the appropriate core food safety regulator of the MRL breach if the food in question is being sold or is likely to be sold.

In addition to the MRL compliance testing and broader enforcement of chemical control-of-use acts by the different state and territory departments and agencies, there are a number of private sector initiatives to ensure compliance with MRLs and/or the proper use of agricultural and veterinary chemicals (box 13.10).

Given the role of MRL compliance monitoring in the broader regulation of agricultural and veterinary chemicals, attempting to attribute a burden to MRL testing alone is not informative. Such an approach does not consider:

- the difference in the 'preventative' regulatory requirements of the jurisdictions, such as withholding periods and the control of aerial spraying, that may justify their different approaches to MRL testing

- 
- the efforts of business to comply with testing arising from commercial and trade requirements.

**Box 13.10 National initiatives for chemicals and MRLs (including private sector initiatives)**

The **FreshTest** Program was established by the Australian Chamber of Fruit and Vegetable Industries. It was developed to reduce costs and coordinate the thousands of tests being conducted annually by the wholesalers for verification of their food safety and quality assurance systems. In each residue test, the produce is tested for 110 different substances and for compliance against the ANZFS Code MRLs.

**Chemcert Australia** was established by the National Farmers' Federation and the Rural Training Council of Australia as a national training and accreditation program. Chemcert Australia trains chemical users to meet all regulations and laws requiring the safe use of agricultural and veterinary chemicals, as well as their obligations under industry quality assurance programs.

The **Australian Total Diet Survey** is coordinated by FSANZ for the purpose of estimating the dietary exposure of Australians to a range of pesticide residues, contaminants and other substances that can be found in the food supply. It is one of the few surveys that consider food in a 'table ready' form. It is completed approximately every two years.

The **Australian Milk Residue Analysis (AMRA) Survey** is a program monitoring agricultural and veterinary residues (and environmental contaminants) in raw cow's milk. Dairy Food Safety Victoria coordinates the AMRA Survey on behalf of the Australian Dairy Authorities Standards Committee and the Australian dairy industry. The AMRA Survey is an integral part of the Australian dairy industry's efforts to secure access to major export markets.

*Sources:* CFVIWA (2009); DAFF (2008b); Dagg et al. (2006).

It is the overall burden of these requirements that is important to business, not simply the MRL monitoring component. Unfortunately, the breadth of such an investigation is beyond the scope of this study, but this study does point to a number of issues and inconsistencies that warrant further consideration by regulatory authorities. Notwithstanding, the duplication of testing (discussed below) can be an unnecessary burden and is within the scope of this study.

*Duplication within Australia*

Under the regulatory framework outlined above, it is possible that the food sold in any jurisdiction is subject to testing by a number of different departments/agencies:

- 
- food produced in Australia could be tested by the primary industry department in the jurisdiction of production for the purposes of a chemical control-of-use Act and subsequently tested in the jurisdiction of sale by the local council or core food safety regulator for the purpose of compliance with the MRLs contained in the ANZFS Code
    - this food may also be tested under one or more ‘voluntary programs’, such as the NRS, Australian Milk Residue Analysis survey (AMRA — box 13.10),<sup>14</sup> FreshTest (box 13.10) or other private sector food safety/quality assurance processes (such as the Woolworth’s program referred in the Australian Hydroponic & Greenhouse Association submission (sub. 13))
  - food imported into Australia could be tested by AQIS at the border and subsequently tested in the jurisdiction of sale by the local council or core food safety regulator.

While the duplication of non-voluntary government compliance testing is possible ‘in theory’, it is unlikely to occur in practice given the limited amount of random MRL testing undertaken by the core food safety regulators and local councils.<sup>15</sup>

## **MRL enforcement — New Zealand**

In contrast to the fragmented Australian approach, the NZFSA is responsible for managing the risks from the use of agricultural and veterinary chemicals to animal welfare, agricultural security, public health and trade in New Zealand. It is also responsible for assuring the safety and suitability of New Zealand produced food for both the domestic and export markets.

The requirement to register agricultural and veterinary chemicals, and the conditions it can impose upon the registration, is the primary tool used by the NZFSA to fulfil its responsibilities. The NZFSA also employs a number of controls and practices to ensure that chemical residues in food do not breach the regulatory thresholds including:

- effective border controls on imported chemicals<sup>16</sup>

---

<sup>14</sup> Results from the NRS (meat) and AMRA (dairy) underpin AQIS’s export certification requirements in respect to MRLs. As such, duplication of this testing can affect Australians producing those commodities for export markets.

<sup>15</sup> In consulting with these regulators, the Commission understands that most regulators take a reactive approach to MRL compliance — undertaking testing/investigation in response to a complaint, suspected breach or notification of a possible issue from a primary industry department.

<sup>16</sup> In Australia, this is the responsibility of AQIS.

- 
- restricted distribution, through the veterinary profession, of certain categories of veterinary medicines
  - industry codes of practice and training
  - the use of movement control on farms as a management tool where noncompliant residue levels have been detected (NZFSA 2009d).

The NZFSA also undertakes a number of programs to monitor MRLs (box 13.11).

#### **Box 13.11 NZFSA MRL monitoring programs**

**National Chemical Residue Programme (NCRP)** — tests animal products (for example: red meat; salmon; and, honey) for agricultural and veterinary chemicals. The NCRP is designed to:

- assess the effectiveness of the controls and practices of the NZFSA and industry
- identify instances of noncompliance and remove any affected product from the human food chain
- implement investigative procedures to identify the cause of any nonconforming residues and eliminate future residue noncompliance from that cause
- allow the NZFSA to provide credible assurances on the residue status of New Zealand food to domestic and export markets.

**National Chemical Contaminants Programme** — tests raw cow's milk at the farm of production. It tests for a wide range of agricultural chemicals, including those that may be of interest to importing countries (regardless of whether the relevant chemical is used in New Zealand). The programme is used to verify broader control measures rather than as a control measure in its own right.

**Food Residue Surveillance Programme** — tests both domestically produced and imported food for compliance with MRLs. However its primary focus is on those foods not covered in other programmes (such as the NCRP and the National Chemical Contaminants Programme).

*Source:* NZFSA (2009a).

### **Rates of compliance — Australia and New Zealand**

CHOICE and others have raised concerns regarding noncompliance with the MRLs contained in Standard 1.4.2 (ABC 2009, Burke 2008, Burke 2009 and Milne 2008). Where a business does not comply with a regulation, it does not face a burden from that regulation (aside from penalties/punishment if that noncompliance is detected and enforcement action taken by the regulator). Thus, complying businesses may be at a cost disadvantage to their noncompliant peers. On the whole, the rate of

compliance with MRLs in Australia and New Zealand is generally 94 per cent or higher (table 13.10), suggesting few businesses are deliberately obtaining a cost advantage through noncompliance.

**Table 13.10 MRL compliance**

<i>Testing program</i>		<i>Year</i>	<i>Government or Private</i>	<i>Commodity</i>	<i>Sample size</i>	<i>Rate of compliance</i>
					Number	%
Aus	NRSA <sup>a</sup>	2008	Government	Aquaculture	15	100
Aus	NRSA <sup>a</sup>	2008	Government	Eggs	75	92
Aus	NRSA <sup>a</sup>	2008	Government	Honey	226	100
Aus	NRSA <sup>a</sup>	2008	Government	Meat	14 184	99
Aus	NRSA <sup>a</sup>	2008	Government	Plant products (incl. grain)	4 280	99
Aus	NRSA <sup>a</sup>	2008	Government	Wild fish	109	100
Aus	IFIS <sup>b</sup>	2008	Government	Farmed fish and prawns	2 569	99
Aus	IFIS <sup>b</sup>	2008	Government	Fruit, meat and vegetables	6 158	99
Aus	IFIS <sup>b</sup>	2008	Government	Herbs and spices	637	98
Aus	IFIS <sup>b</sup>	2008	Government	Honey	62	100
Aus	AQIS <sup>c</sup>	2006-07	Government	Seafood	100	100 <sup>d</sup>
Aus	FreshTest	2002-present	Private	Various produce	>30 000	approx. 97
Aus	Choice	2008	Private	Strawberries	27	89
NZ	FRSP <sup>e</sup>	2007-08	Government	Capsicum	48	94
NZ	FRSP <sup>e</sup>	2007-08	Government	Courgettes	48	100
NZ	FRSP <sup>e</sup>	2007-08	Government	Lettuce	48	94
NZ	FRSP <sup>e</sup>	2007-08	Government	Mushrooms	48	94
NZ	FRSP <sup>e</sup>	2007-08	Government	Strawberries	48	92
NZ	FRSP <sup>e</sup>	2009	Government	Celery	24	96
NZ	FRSP <sup>e</sup>	2009	Government	Spinach	24	79
NZ	NCRP <sup>f</sup>	2007-08	Government	Farmed mammals	5 119	100
NZ	NCRP <sup>f</sup>	2007-08	Government	Ostrich and emu	79	100
NZ	NCRP <sup>f</sup>	2007-08	Government	Honey	69	100
NZ	NCRP <sup>f</sup>	2007-08	Government	Farmed salmon	51	100
NZ	NCRP <sup>f</sup>	2007-08	Government	Broilers	166	100
NZ	NCRP <sup>f</sup>	2007-08	Government	Raw milk and colostrum	418	100
NSW	SMRS <sup>g</sup>	1989-2005	Government	Fruit and vegetables	> 6 900	97
Vic	TVPMP <sup>h</sup>	2006	Government	Fruit	153	93
Vic	TVPMP <sup>h</sup>	2006	Government	Herbs	50	80
Vic	TVPMP <sup>h</sup>	2006	Government	Nuts	5	100
Vic	TVPMP <sup>h</sup>	2006	Government	Vegetables	212	91

(continued next page)

**Table 13.10 (continued)**

	Testing program	Year	Government or Private	Commodity	Sample size	Rate of compliance
					Number	%
Vic	TVPMP <sup>h</sup>	2007/08	Government	Berries (and table grapes)	125	84
Vic	TVPMP <sup>h</sup>	2007/08	Government	Pome fruit	90	96
Vic	TVPMP <sup>h</sup>	2007/08	Government	Stone fruit	81	99
Vic	TVPMP <sup>h</sup>	2007/08	Government	Leafy vegetables	80	88
Vic	TVPMP <sup>h</sup>	2007/08	Government	Root and tuber vegetables	81	98

<sup>a</sup> National Residue Survey. <sup>b</sup> Imported Food Inspection Scheme — selected chemicals only. <sup>c</sup> Imported Food Survey — Seafood. <sup>d</sup> A 'number of samples' did, however, contain antimicrobial residues not permitted under the ANZFS Code. <sup>e</sup> Food Residue Surveillance Programme. <sup>f</sup> National Chemical Residue Program. <sup>g</sup> Sydney Markets Residue Survey. <sup>h</sup> Targeted Victorian Produce Monitoring Program.

Sources: AQIS (2008); Burke (2008); Burke (2009); CFVIWA (2009); DAFF (2008b); DAFF (2009b); DAFF (2009c); NZFSA (2008c); NZFSA (2008d); NZFSA (2009e); NZFSA (2009i); NSW DPI (2006); DPI (Victoria) (2007); DPI (Victoria) (2009).

For tests comprising over 100 samples, such as NRS tests of meat, the compliance rates are generally 97 per cent or higher. Compliance rates of less than 90 per cent typically relate to smaller scale samples, such as tests of spinach in New Zealand under the FRSP. The small size of these samples renders any statistical measures particularly volatile and undertaking testing on larger samples of these seemingly 'lower compliance' commodities may produce different compliance rates to those listed in table 13.10.

In Australia, the rate of compliance in NRS and IFIS (AQIS) testing for most commodities is 98 per cent or higher. In comparison, the results for testing completed by state authorities show compliance rates between 80 and 100 per cent. The test results for herbs are an example of the difference in compliance rates, with 99 per cent of imported herbs testing as compliant, compared to an 80 per cent rate of compliance for domestically produced herbs (based on Victorian testing).<sup>17</sup> As the testing conducted by the state and territory primary industry departments tends to be either the targeted testing of a particular food/chemical combination for which an MRL breach is suspected or broader testing of a commodity in reaction to a detected MRL breach, it is to be expected that testing of states and territories show slightly lower compliance rates than the NRS and IFIS testing (which are more or less taken from random samples).

<sup>17</sup> The Commission understands the Victorian testing was targeted at high risk areas (for example, targeting newly registered chemicals and recently withdrawn chemicals). As such, it may not be comparable with the random approach and larger sample of the IFIS testing.