



**Productivity Commission
Inquiry into cost recovery arrangements by
Commonwealth Government regulatory,
administrative and information agencies**

**Submission from the Australia New Zealand
Food Authority**

December 2000

Introduction

This submission provides a short description of the Australia New Zealand Food Authority (ANZFA) and the cost recovery arrangements for the assessment of applications to vary the Food Standards Code, introduced following recent amendments to the *Australia New Zealand Food Authority Act 1991* (ANZFA Act).

ANZFA supports cost recovery and welcomes this inquiry and the proposed development of guidelines by the Productivity Commission.

Australia New Zealand Food Authority

ANZFA is an independent statutory authority established by the ANZFA Act. This Act provides a focus for cooperation between the Commonwealth, New Zealand and States and Territory governments, industry and the community to establish and maintain a uniform basis for food regulation throughout Australia and New Zealand.

In 1991, the National Food Authority was established as a result of an Intergovernmental Agreement between the Commonwealth of Australia and the States.

The purpose of the 1991 agreement was to consolidate responsibility for developing food standards in one specialist agency and to ensure uniformity in food standards across Australian States and Territories, which have primary responsibility for enforcing food laws.

In 1995, an *Agreement between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards* (the Treaty) was signed. It provided for a joint food setting system to cover both Australia and New Zealand and to harmonise food standards between the two countries, reduce compliance costs for industry and help remove regulatory barriers to trade in food.

ANZFA operates under the Commonwealth Health and Aged Care portfolio. The Minister for Health and Aged Care, Dr Michael Wooldridge, has delegated responsibility for ANZFA to his Parliamentary Secretary, Senator the Hon Grant Tambling.

The Council of Australian Governments has recently signed a new Intergovernmental Agreement and following amendment of the ANZFA Act and the signing of a revised Treaty with New Zealand, ANZFA will become Food Standards Australia New Zealand within a new food regulatory system.

Functions

ANZFA, in cooperation with the Commonwealth, State and Territory Governments and the New Zealand Government, develops food standards and other food regulatory measures for Australia and New Zealand. A ministerial council chaired by the Commonwealth and made up of Health Ministers from all jurisdictions (the Australia New Zealand Food Standards Council (ANZFSC)) is responsible for approving the food standards that ANZFA develops. Once ANZFSC approves food standards, they are published in the Commonwealth Gazette and the New Zealand Government Gazette and are automatically adopted by reference in State and Territory law and in New Zealand. With the Intergovernmental Agreement ANZFSC will be restructured and some of the approval processes for food standards will change with Food Standards Australia New Zealand effectively becoming the decision maker

on food standards. It is likely that the current cost recovery provision of ANZFA will be used by Food Standards Australia New Zealand.

In Australia, ANZFA also:

- coordinates food product recalls in cooperation with the States and Territories;
- conducts research on matters that may be included in a food standard;
- undertakes food safety education initiatives in cooperation with the States and Territories;
- develops codes of practice for industry on any matter that may be included in a standard;
- develops risk assessment policies for imported foods into Australia; and
- coordinates the surveillance of food available in Australia.

The overall objective of ANZFA, as given in section 2A of the ANZFA Act, is to ensure a high standard of public health protection throughout Australia and New Zealand through the achievement of the following goals:

1. a high degree of consumer confidence in the quality and safety of food, in both countries;
2. an effective, transparent and accountable regulatory framework within which the food industry can work efficiently;
3. the provision of adequate information relating to food to enable consumers to make informed choices; and
4. the establishment of a common set of rules and the promotion of consistency between domestic and international food regulatory measures without reducing the safeguards applying to public health and consumer protection.

Food Standards Policy and Process

Food standards are contained in the Food Standards Code and there are two ways in which they can be amended. The process for varying food standards is initiated either on receipt of an application from an external body, or through ANZFA's own preparation of a proposal. The process is detailed in the ANZFA Act which also prescribes detailed consultation requirements.

ANZFA's objectives in developing food regulatory measures, such as food standards, are set out in section 10 of the ANZFA Act. These are, in order of priority:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

In making recommendations on food standards, ANZFA must also give regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry; and

- the promotion of fair trading in food.

ANZFA's Operations and Funding

ANZFA has around 100 staff of which 6 are based in ANZFA's New Zealand office.

Funding for ANZFA comes from government appropriations, of which \$11.375m came from the Commonwealth in 1999-00 and a further \$AUD 1.033m from the New Zealand Government. In 1999-00 a further \$1.160m was received from a variety of sources, mainly other government agencies for special projects and tasks, payments by staff, sale of non-financial assets, subscriptions, royalties and foreign exchange gains.

ANZFA's Approach to Cost Recovery

Background

In 1996 the Government decided that ANZFA should introduce fees for the assessment of applications to vary or amend the Food Standards Code. In 1997, ANZFA commissioned a review of possible sources of revenue for ANZFA including application fees. (A copy is provided at Attachment A).

The report explored three areas of potential revenue raising. These were:

- 1) Charging for present activities and in particular for applications to vary standards.
- 2) Possible new "entrepreneurial" activities.
- 3) A levy or voluntary contribution from the food industry.

Charging for Applications. The key findings in relation to charging for applications were that there is a significant "public good" in the process of setting food standards. Unlike the activities of the Therapeutic Goods Administration or the National Registration Authority, in most cases, the processing of an application by ANZFA does not transfer a commercial benefit solely to the applicant. This is because the approval of an application is not limited to the applicant, nor generally to the individual product, but provides for generic amendments to the Food Standards Code. The review concluded that this "free-rider" effect would make it inequitable to charge an applicant the full cost of processing an application.

Entrepreneurial Activity. The review considered a number of options for new entrepreneurial activities. Providing services such as the accreditation by ANZFA of labels as satisfying labelling standards or the products satisfying food standards, similar to the Heart Foundation tick campaign. The report concluded that such proposals would be expensive to establish, raise serious conflict of interest concerns, divert resources away from core functions and could compromise the role of the States and Territories in their enforcement and surveillance functions. For these reasons this proposal was not recommended.

A levy or voluntary contribution. The review saw this as the most viable option for recovering funds. Even though food standards were generic in nature they did provide a substantial general benefit to the food industry. The lack of a uniform national registration system meant that an across the board levy on all food businesses (approximately 170,000) would be difficult to implement. The report recommended that only the largest companies should be levied. Strong stakeholder opposition meant that the government did not take up this recommendation.

These options were considered in the developed of ANZFA's current cost recovery provisions.

Cost Recovery Provisions for ANZFA

Amendments to the ANZFA Act were approved in December 1999, to allow ANZFA to collect fees in certain circumstances. Section 66 of the ANZFA Act gives authority to charge for the assessment of applications to amend the Food Standards Code. Cost recovery is now allowable under two circumstances being:

- where there is an *exclusive capturable commercial benefit* (ECCB) relating to the approval of an application; and
- where an applicant opts to pay to have an application processed more expeditiously.

ANZFA's Three-Year Work Plan

ANZFA is required under its Act to develop a three-year work plan which prioritises food standards applications. The work plan has three groups where applications in the first two groups will be processed and funded through government appropriations and applications in the third group will be required to pay the full cost of processing. The groups in the work plan are:

1. Emergency applications and other high priority applications with strong public health and safety components or consumer protection needs will be dealt with as a matter of priority.
2. Applications with less significant consumer protection benefits will be processed in order of receipt. A minimum of 10 percent of ANZFA's standards budget each year will be set aside to ensure these applications are progressed. Applicants will have the option of paying to have their application processed in category three.
3. Applications which have an ECCB or those from group two that opt to pay, will be required to pay the full cost of processing that application based on a five-tier cost structure. The charges will be used by the Authority to acquire additional resources to undertake the work and ensure that work on other applications is not delayed.

Further aspects of the work plan arrangements are:

- The work plan is prepared in consultation with stakeholders before 30 June each year and published on the ANZFA website. The plan is updated regularly.
- The applications management system and level of charges will be reviewed annually.
- A review and appeals mechanism has been established.

Exclusive Capturable Commercial Benefit

Recent changes to the Food Standards Code require that certain types of food may be approved by ANZFA on a case by case basis. This is used where there are possible or perceived safety concerns such as with genetically modified and novel foods. As approval of some of these applications will in many cases provide a direct commercial benefit to applicants, a charge will apply to such applications received after 1 July 2000.

Section 66 (9) of the ANZFA Act defines an ECCB application as:

- a) the applicant can be identified as a person or body that may derive a financial gain from the adoption of the draft standard or draft variation of the standard that would be prepared in relation to the application; and
- b) any other unrelated persons or bodies, including unrelated commercial entities, would require the agreement of the applicant in order to benefit financially from the approval of the application.

Implementation of Cost Recovery Provisions

Charging for Preliminary Assessment

Each chargeable application will be required to pay a fee of \$2,800 before processing of the preliminary assessment stage is completed. This fee is based on an average time taken to undertake this stage of the assessment process.

Charging for Full Assessment and Inquiry

As part of the preliminary assessment process the complexity of the application will be determined. A five-tier fee structure has been developed based on the average time taken to process different types of applications. In developing this fee structure, the aim has been to put in place the simplest and fairest system that gives applicants certainty of the total charges they will face before they agree to work commencing.

The fee structure is set out in the following table (see Attachment B):

Category	Avg Hours	Cost per hour ¹	Actual cost ² \$	Hours
Very Simple application	25 hrs	\$112	2,800	0-50
Simple application	125 hrs	\$112	14,000	51-200
Average application	300 hrs	\$112	33,600	201-400
Complex application	500 hrs	\$112	56,000	401-600
Highly complex app	750 hrs	\$112	84,000	601-900

1. Includes all salary and administration costs for a senior officer in 2000-01
2. Fees cover all costs associated with varying a standard or having a product or process approved through to the final decision making stage by the Ministerial Council

Goods and Service Tax (GST)

A request has been forwarded to the Treasurer, seeking a determination to exempt these charges from GST under Division 81 of the GST Act based on the underlying principle that regulatory charges should not be subject to GST.

Refund Policy

The grounds for providing refunds are clearly set out in the ANZFA Act. For a preliminary assessment a refund will only be provided if an application is withdrawn before work commences.

In the case of the fee for the full assessment and inquiry stage, the single up front payment will be divided on an 85/15 percent basis between the two stages. If an application is withdrawn before work on the full assessment stage commenced then the applicant should be entitled to a full refund. If an application is withdrawn during the full assessment stage but before 50% of the work has been completed, then a refund of 50% of the full assessment cost and the cost of the inquiry stage will be made. If an application is withdrawn after 50% or more of the work has been completed in the full assessment stage, then only the cost of the inquiry stage would be refunded. If an application is withdrawn after work on the inquiry stage has commenced then there will be no refund.

In the case of an application being rejected, at the full assessment stage, then only the cost of the inquiry stage would be refunded. If the application is rejected at the inquiry stage then there would be no refund.

Review Process

ANZFA has established a review mechanism that will facilitate the review of decisions by its officers for decisions related to charging. Decisions related to the level of charges will be subject to review by the Board of ANZFA. Decisions on whether an application should be included in the work program will, after reconsideration by the Board, be reviewable by the Administrative Appeals Tribunal.

Possible Future Cost Recovery

ANZFA believes that there are further opportunities to recover costs and would like to extend charges for food standards applications on the grounds that applicants do in general gain some financial benefit, even if it might only be in the short-term, and as such should be expected to meet at least some of the costs. There are several options such as:

- Basing fees based on a proportion of the full costs discounting for the amount of public good involved; or
- Charging an administration fee for all applications to cover the basic lodgement and public notification costs.

Given that there are only between 30-50 applications in any one year, the amount of funds recovered would not be high and with the latter option not significant in terms of ANZFA's total budget.

CALCULATION OF CHARGES

Following an initial charge in order to undertake a preliminary assessment, a five tiered fee structure will apply to further progress the application.

Fees will be charged in accordance with the costs incurred and include all salary and associated administrative costs related to varying a standard or having a product or process approved through to the final decision making stage. The system will be reviewed annually to ensure it operates as efficiently as possible and that the level of charges are appropriate. The types of applications that might be expected could include:

- Extending the use of a permitted food additive or processing aid;
- Introducing or varying a labelling requirement;
- Permitting a new ingredient to be added to a standardised food;
- Varying or establishing a maximum residue limit for an agricultural or veterinary chemical;
- Allowing food irradiation for a food or recognising a new processing technology;
- Allowing a novel food; or
- Approving a food derived from using gene technology.

The categories of the five tiered structure are:

1) Very Simple. Generally a variation or variations to the *Food Standards Code* that involve:

- Extremely simple procedural matters;
- No public consultation; and
- Safety assessment undertaken by another agency.

The fee for a simple application will be \$A2,800.

2) Simple. Generally a variation or variations to the *Food Standards Code* which:

- Do not require a risk assessment to be prepared;
- Raises issues which are uncomplicated and can be dealt with quickly;
- Updates standard methods; or
- Involves any other matter where the assessment process is simple.

The fee for a simple application will be \$A14,000.

3) Average. Generally a variation or variations to the *Food Standards Code* which:

- Is more complicated than a simple application but still straightforward; or
- Is a revision of a previously undertaken risk analysis.

The fee for an average application will be \$A33,600.

4) Complex. Includes applications which require an additional degree of assessment such as:

- Varying a standard where a new risk assessment is required, for example approval of a new food additive or processing aid not currently permitted;
- Introducing a new standard for food; or
- Other complex and extensive work being required.

The fee for a complex application will be \$A56,000.

5) Highly Complex. Includes applications which require an additional degree of assessment such as:

- A higher degree of external scientific and technical input;
- Evaluation of a complex toxicology data package for new food additives;
- Preparation of detailed exposure estimates; or
- Protracted negotiation of outcomes with stakeholders.

The fee for a highly complex application will be \$A 84,000.