



AUSTRALIAN
FOOD AND GROCERY
COUNCIL

SUBMISSION

SUBMISSION TO

Productivity Commission

IN RESPONSE TO

Red Tape Review

21 November 2005

PREFACE

The AFGC is the peak national organisation representing Australia's packaged food, drink and grocery products industry.

The AFGC has more than 170 companies, subsidiaries and associates as members. Their turnover represents about 80 per cent of the gross dollar value of the highly processed food, beverage and grocery products sector. A list of members is included at *Appendix 1*.

The AFGC represents the nation's largest manufacturing sector. Australia's food, drink and grocery products industry is a substantial contributor to the economic and social welfare of all Australians. The products of the AFGC's member companies reach every household in Australia.

The industry has an annual turnover of about of \$73 billion and employs 200,000 people – almost one in five of the nation's manufacturing workforce. The industry sources more than 90 per cent of its ingredients from Australian agriculture and has more than half its workforce in rural and regional areas.

The industry also has a large overseas market, exporting \$21 billion of food and beverage products in 2005.

The AFGC pursues policy outcomes that are conducive to international competitiveness, investment, innovation, employment growth and profitability.

The AFGC is committed to promoting the sector and the importance of its products and ensuring the industry has one voice in advancing policies and managing issues.

For further information on the AFGC, please see our annual report or visit our website at www.afgc.org.au

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1 EXECUTIVE SUMMARY

Although the original purpose of the Blair Review in 1998 was to simplify food regulation in Australia and New Zealand, the operation of the new system has accumulated excessive red tape and poor delivery in commercial time frames, disadvantaging industry without generating the benefits consumers and government(s) deserved from the reforms.

More and more, consumers are demanding benefits from the foods they purchase beyond that of simple nutrition. The health conscious consumer wishes to take control of their health and expects to take on some “do it yourself doctoring” for diet related chronic disease.

Health benefits of foods are a key driver for industry innovation and are a centrepiece of two government initiatives under the \$137m National Food Industry Strategy¹; the food innovation grants (FIG) scheme and the National Centre for Excellence in Functional Foods²

Benefits do not just accrue to consumers and industry from this form of innovation but the striving for “better for you” foods has an indirect impact on government’s health care dollar by improving the health of the nation and contributing to reduced health care costs.

The main weaknesses of the existing system are:

- the timeframe for decision making and the cumbersome legislative process for developing or amending a standard:
 - There are 70 applications and proposals on the FSANZ work plan. The current waiting period for unpaid applications (before FSANZ commences assessment of the application) is 15-18 months;
- The delays occurring as a result of FSANZ waiting for “policy guidance” from the Food Regulation Ministerial Council
- Calls by the Food Regulation Ministerial Council for “review” when jurisdictions on Council have not used the opportunity to put in submissions during the FSANZ standard development process
- That all applications and proposals are subject to the same assessment process.

Options for reform include:

- Review the powers of the Commonwealth to regulate the composition, sale and advertising of food, and the safe production of food, in Australia. These matters are currently regulated under a web of legislation including State and Territory Food Acts, the Australia New Zealand Food Standards Code and the Imported Food Control Act.
- Review amendments to the FSANZ Bill, accepted by the Government to gain Senate approval, which are not consistent with the objectives of good regulation and provide latitude for extraneous process to be used to impede effective operation of the arrangements.

¹ www.nfis.com.au

² www.nceff.com.au

- Review the FSANZ Act to streamline the approval process of regulatory measures. This was agreed at the March 2005 Ministerial Council meeting and a consultation with industry occurred in April 2005. Ministers at their October 2005 meeting may have agreed to certain changes that require Act amendments.
- Review the powers of the Commonwealth with respect to the COAG agreement on food regulation.
- Review the Trans Tasman Mutual Recognition Agreement and the composition of the Australia New Zealand Food Regulation Ministerial Council.

2 BACKGROUND

The food industry is highly regulated by governments in terms of safety and standards. Food Standards Australia New Zealand (FSANZ) has the tasks of ensuring safe food for consumers through the development of effective food standards for Australia and New Zealand, of providing information for consumer choice, and of preventing misleading and deceptive behaviour by food suppliers.

The latter matter is also regulated under the Trade Practices Act through the Australian Competition and Consumer Commission. It is illegal to sell food, domestically produced or imported, that does not comply with the relevant food standards.

Despite recent reforms intended to reduce the regulatory burden on the food sector product innovation is being stifled by the regulatory framework established through FSANZ (see Box).

Regulatory Review:

The Blair Food Regulation Review³ was undertaken in 1997 to reduce the regulatory burden on the food sector, improve the clarity, certainty and efficiency of the food regulatory system and to continue to protect public health and safety. The Council of Australian Governments (COAG) reached a new intergovernmental food agreement in response to the Blair Review and in July 2001 legislation was passed that established the new statutory authority, Food Standards Australia New Zealand (FSANZ). The outcome of these multiple changes were the separation of food policy development from food regulation setting, the establishment of whole of government(s) views when considering food policy, and the replacement of the old *Food Standards Code* with a streamlined *Code* in December 2002.

Delays caused by inefficient processes have increased in recent years to the point where competitiveness in international markets is being compromised. This is particularly crucial at this time with the existing pressures on manufacturing in Australia requiring innovation to value add to basic commodities to retain export markets.

Simplifying and removing some of the layers of regulations consistent with protection of public health and safety, is urgently required.

³ Food: a Growth Industry

3 CONSUMER DEMAND DRIVES INDUSTRY INNOVATION

More and more, consumers are demanding benefits from the foods they purchase beyond that of simple nutrition. The health conscious consumer wishes to take control of their health and expects to take on some “do it yourself doctoring” for diet related chronic disease.

In the US, where unlike Australia, health claims on foods are permitted, over 50% of shoppers, be they Gen Y, Gen X, Boomers or Matures, purchase products based on specific health related claims about those products⁴.

Health benefits of foods are a key driver for industry innovation and are a centrepiece of two government initiatives under the \$137m National Food Industry Strategy⁵; the food innovation grants (FIG) scheme and the National Centre for Excellence in Functional Foods⁶

Benefits do not just accrue to consumers and industry from this form of innovation but the striving for “better for you” foods has an indirect impact on government’s health care dollar by improving the health of the nation and contributing to reduced health care costs. (Appendix A)

4 FAILURE OF REFORMS TO THE FOOD REGULATORY SYSTEM TO REDUCE REGULATORY BURDEN ON INDUSTRY AND PROMOTE INNOVATION.

Although reform of the food regulatory system was undertaken to introduce a minimum degree of regulation consistent with public health and safety (Appendix B), the system that has emerged has increased complexity with resultant delays and a tendency to more regulation rather than less.

This is particularly crucial at this time with the existing pressures on manufacturing in Australia requiring innovation to value add to basic commodities to improve competitiveness.

Reforms to the system that will permit truthful claims about the health benefits of foods, while maintaining public health and safety are one example of developments that will encourage innovation and investment in foods better able to meet the needs of consumers.

To innovate successfully, the ground rules must be clear, red tape kept to the minimum necessary, and consistent decisions made quickly within the policy and standard development process.

⁴ Sloan AE Top ten global food trends, Food technology (2005) 59:20-32

⁵ www.nfis.com.au

⁶ www.nceff.com.au

5 CHANGES TO FOOD POLICY DEVELOPMENT HAVE NOT HELPED INDUSTRY AS INTENDED

While the engagement of whole of government responses to food policy issues has broadened the debate to produce, in some instances, better policy, it has provided a forum for delay (see Table) to the detriment of the Standard setting process and to industry innovation.

Report card on time taken for policy process and regulatory action (Nov 2005)

| Issue | Policy Development | | Regulatory response | |
|---|--------------------|---|--|------------|
| | Time | Action | Action | Time |
| Food Type Dietary supplements | 36 Months+ | NONE <i>Chair: DoHA</i> | | |
| Caffeine in Foods | 9 Months | Policy advice to Ministerial Council April 2003 <i>Chair: DoHA</i> | NONE | |
| Country of Origin Labeling | 4 Months | Policy advice to Ministerial Council April 2003 <i>Chair: DAFF</i> | Draft Assessment May 2005 2 nd Draft assessment Sep2005 Final assessment Oct2005 | 30 Months+ |
| Health and Related Claims | 36 Months | Final Policy advice to Ministerial Council Mar 2005 <i>Chair: DoHA</i> | Initial assessment Aug 2004 | 15 Months+ |
| Novel Foods | 9 Months | Policy advice to Ministerial Council Dec 2003 <i>Chair: DoHA</i> | Initial Assessment Dec 2004 Draft assessment Oct 2005 | 21 Months+ |
| Fortification of Foods with vitamins and minerals | 18 Months | Policy advice to Ministerial Council May 2004 <i>Chair: NZFSA/Vic</i> | Mandatory folate addition initial assessment Oct 2004 Mandatory iodine addition initial assessment Dec 2004 | 15 Months+ |
| Fortification of Foods with bioactive substances | 8 Months+ | BEGUN Mar 2005 <i>Chair: Vic</i> | | |

The process can be used by those with particular views to request “review” of FSANZ regulatory decisions. The COAG agreement permits an individual jurisdiction to request FSANZ “review” its decision and on following consideration, a majority can request a second review.

5.1 SOME EXAMPLES OF THIS:

- Phytosterol esters addition to low fat milks and yoghurts was to be permitted for use in October 2004 but a jurisdiction requested a review based on lack of policy guidance on the addition of “bioactives to foods”. This occurred despite permission already having been given by FSANZ for the addition of Phytosterol esters to margarines.

The policy consultation for addition of “bioactives to foods” commenced March 2005 and is unlikely to be brought to the Ministerial Council for decision before 2006.

FSANZ returned the decision to the Council unchanged, and a second review was sought in October 2005. At the time of writing this matter remains unresolved.

- Calcium addition to juices and cracker biscuits received a final assessment report from FSANZ recommending permission for addition in October 2003. This was a paid application submitted in 2001 which required FSANZ to progress it within 12 months of application (subject to all necessary information being supplied by the applicants).

Certain jurisdictions requested a review pending policy advice on fortification with vitamins and minerals. Fortification policy was finalised in May 2004. FSANZ did not progress the application until it developed an “implementation framework” for the fortification policy upon which it consulted in Feb 2005.

Ministerial Council received an unchanged final assessment report from FSANZ in May 2005 and, by majority, Council requested a second review. FSANZ again returned an unchanged final assessment report which was accepted by Ministerial Council in October 2005. In total, this paid application took 4.5 years for permission to be granted.

- FSANZ Annual report (2004-5) notes that: “Since 2002, the number of reviews requested by the Ministerial Council has increased from 3 (9% of matters notified to the Ministerial Council) to 8 (25%) for the year ending June 2005. In May, the Ministerial Council requested, for the first time, a second review on a matter (fortification of foods with calcium). Matters referred to FSANZ by the Ministerial Council ranged from genetically modified foods, processing aids, phytosterols, fortification, to minor omnibus amendments. In all cases FSANZ reaffirmed its approval”.

Table from FSANZ Annual Report 2004-5

Table 4: Notification Outcomes

| | 2002-03 | 2003-04 | 2004-05 |
|---------------------|---------|---------|---------|
| Matters Notified | 33 | 31 | 32 |
| Requests for Review | 3 (9%) | 3 (10%) | 8 (25%) |

6 CHANGES TO THE FOOD STANDARDS CODE HAVE NOT HELPED INDUSTRY AS INTENDED

The balance between ease of use and prescription is a difficult one and the revisions to the Food Standard Code of November 2000 removed much of the prescriptive detail, but left some parts unchanged eg fortification with vitamins and minerals.

Challenges to the Code have been fortification of foods, novel foods, special purpose foods and dietary supplement imports from New Zealand, all of which have led to increased complexity.

Because of the prescriptive nature of the code and pace of innovation in the food industry, the Code remains in a state of constant amendment in order to remain relevant. The

majority of applications to amend the Code come from industry. The application process places a heavy burden on industry and governments.

The standard setting process is a long and exhaustive one, involving 2 rounds of public comment. Significant resources are expended by industry in participating in the standards setting process: in the provision of information, data, comment and participation in the consultation process.

6.1 SOME EXAMPLES OF THIS:

- In its 2003/04 Annual Report FSANZ reported finalising twenty three (23) of the applications it had received and twelve (12) proposals it had raised during the financial year 2003-04. This was slightly less than in previous years and caused a blow-out in the waiting period for Group 2 applications, which went from 12 months to 18 months. Group 2 applications are unpaid and placed in the three-year rolling work plan to be commenced in order of receipt. At June 2004, there were forty three (43) Group 2 applications waiting, up from previous years.
- Following the finalising of fortification policy in May 2004, FSANZ was asked by the Ministerial Council, to progress mandating the addition of folate and iodine to the food supply for public health reasons. Proposals were released by FSANZ in August and December 2004 respectively, to be progressed during 2005/06. Because the agreed policy requirements for the mandatory addition of folate and iodine to the food supply appear not to be met, it has been suggested that “special” policy be formulated for these nutrients. At the time of writing this matter remains unresolved.

The FSANZ process requires two rounds of public comment on most applications and proposals, for changes to the food standards code. In many instances, due to resource issues, jurisdictions do not take up this opportunity to comment. However, at the time FSANZ takes its decision to Ministerial Council, jurisdictions can raise objections, requesting review. Examples (detailed above) include phytosterol esters and calcium addition to juices and cracker biscuits.

7 WHY HAS THE SYSTEM BECOME LIKE IT IS?

7.1 STRUCTURE OF THE SYSTEM:

Food Standards are set transnationally and adopted through jurisdiction Model Food Acts. This means implementation and enforcement of the regulation falls to the jurisdictions. The Agency that develops the Standard (FSANZ) has no responsibility for its implementation or enforcement.

Resource issues will always emerge, with jurisdictions prioritising their enforcement actions. Food labelling requirements take a lower priority than food safety issues. Food Policy is set by those who implement and enforce the regulations (the jurisdictions) but not by the Agency that develops the regulations (FSANZ).

If a developing regulatory measure appears to be difficult to implement or enforce, the jurisdictions can delay by calling for policy review or by requesting a “review” of the

proposed regulatory measure at Ministerial Council. Examples of both actions have occurred and are detailed elsewhere in this document. Such actions are to the detriment of an innovative and competitive food industry.

The FSANZ Act was designed as a “one size fits all” process for setting or amending standards no matter how minor those amendments might be. The process of public consultation and the ability of Ministerial Council to call for review were all established as part of a negotiation to guide the legislation through a hostile Senate (Appendix C).

8 OPTIONS FOR REFORM

8.1 GOVERNANCE – FOOD REGULATION

- Review the powers of the Commonwealth to regulate the composition, sale and advertising of food, and the safe production of food, in Australia. These matters are currently regulated under a web of legislation including State and Territory Food Acts, the Australia New Zealand Food Standards Code and the Imported Food Control Act.
- Review amendments to the FSANZ Bill, accepted by the government to gain Senate approval, which are not consistent with the objectives of good regulation and provide latitude for extraneous process to be used to impede effective operation of the arrangements.
- Review the FSANZ Act to streamline the approval process of regulatory measures. This was agreed at the March 2005 Ministerial Council meeting and a consultation with industry occurred in April 2005. Ministers at their October 2005 meeting may have agreed to certain changes that require Act amendments.

8.2 GOVERNANCE – FOOD POLICY

- Review the powers of the Commonwealth with respect to the COAG agreement on food regulation.
- Review the Trans Tasman Mutual Recognition Agreement (TTMRA) and the composition of the Australia New Zealand Food Regulation Ministerial Council. Review of the TTMRA is scheduled to commence in late 2005.

APPENDIX A: ECONOMIC BENEFITS OF HEALTH CLAIMS ON FOODS

CURRENT PHARMACEUTICAL MANAGEMENT AND HEALTH PROMOTION ACTIVITIES

Annual Government Costs 2004

| | |
|---|---------------|
| Cholesterol lowering medicines | \$789m |
| Anti-inflammatory medicines | \$190m |
| Selected health promotion activities by government | \$155m |

Cardiovascular disease

- Australian taxpayers subsidise cholesterol-lowering medicines by more than \$789m a year.
- Dietary manipulation can lower blood cholesterol and there are several ingredients in foods that can effectively do this (phytosterol esters, beta glucans, unsaturated fatty acids), yet health claims are currently prohibited.
- The food industry would be able to deliver health messages into every home at minimal cost to government if health claims were permitted. In the area of cardiovascular disease, health claims could effectively reduce the economic burden of taxpayer-funded medicines.

Health claims in reducing blood cholesterol

The National Heart Foundation of Australia endorses plant sterol enriched margarines as an effective cholesterol-lowering agent, linking reduction of this biomarker to decreased risk of coronary heart disease.

- Consider how much more effective this message would be if it could be communicated at the point of purchase in the form of a health claim about foods that lower blood cholesterol, in the context of the total diet.

Arthritis

- In 2000, nearly three million Australians had arthritis-related conditions.
- 5% of all Australians take medicines for arthritis.
- It costs \$2.24b a year in health costs, 32% of which is due to hospital bed costs. A further \$6.72b is spent on indirect costs.
- This represented 1.4% of GDP in 2000, or \$468 for every Australian.

Foods containing the anti-inflammatory fatty acids derived from fish oils have the potential to reduce the use of anti-inflammatory medicines currently costing the Government \$190m a year.

Health claims in managing arthritis

- Consider how much more effective this could be by permitting health claims on those foods that contribute to significant n-3 PUFA intake, in the context of the total diet.

Potentially, this could help reduce health care costs associated with the management of arthritis.

Type 2 diabetes

- 940,000 Australians over 25 have diabetes.
- Those with diabetes more likely to be:
 - hypertensive; and/or
 - obese
- For every diagnosed case, there is one undiagnosed case.
- Direct health care costs of \$814m a year (00-01 data), 36% of which is due to hospital bed costs.
- Foods with a low glycaemic index (GI) can help manage blood glucose levels.

Health claims in managing type 2 diabetes

- Consider how much more effective this could be by permitting health claims to say low GI foods, in the context of the total diet, would assist those with existing diabetes and help prevent the development in those with impaired glucose tolerance (16% of the population).

Osteoporosis

- In 2001, nearly two million Australians had osteoporosis-related conditions.
- If nothing is done, this will increase to three million people by 2021, with a fracture every three minutes.
- It costs \$1.9b a year in health costs, 45% of which is due to hospital bed costs. A further \$5.6b is spent on indirect costs.
- This represented 1.2% of GDP in 2000-01, or \$389 for every Australian.
- The public health burden of osteoporosis is of major significance to Australians, both economically and in quality of life years lost.

Health claims in preventing osteoporosis

Increasing people's consumption of calcium has the potential to save millions of dollars in health care costs and provide many Australians with more years of healthy life.

- Consider how much more effective this could be by permitting health claims on those foods that contribute to significant calcium intake, in the context of the total diet.

Cancer

- Cancer currently accounts for 28% of male deaths and 24% of female deaths.
- 1 in 3 men and 1 in 4 women will be directly affected by cancer in the first 75 years of life.
- An estimated 261,000 potential years of life are lost to the community each year as a result of people dying of cancer before the age of 75.
- Breast, prostate, colorectal, and lung cancer most common.

- Direct health care costs of \$597m a year for these four types of cancer (93–94 data).
- Increasing the consumption of vegetables by one serve a day could save \$24.4m a year in health-care costs.

Health claims in preventing diet-related cancers

The Cancer Council of NSW specifically links increased intake of vegetables and fruit with a decreased risk of cancer.

- Consider how much more effective this message would be if this communication could be at the point of purchase in the form of a health claim about foods that help reduce the risk of certain cancers, in the context of the total diet.

APPENDIX B: FOOD REGULATION REFORM CHRONOLOGY

The Blair Food Regulation Review “*Food: a Growth Industry*” was undertaken in 1997 to:

- reduce the regulatory burden on the food sector;
- improve the clarity, certainty and efficiency of the food regulatory system; and
- protect public health and safety.

Its report in 1998 recommended reforms that focussed on 3 key areas:

- structural - establishing a national system incorporating key stakeholders to achieve agreed food safety outcomes through consistent approaches;
- legislative/regulatory - establishing the overarching legislative framework for setting domestic food standards based on rigorous science and assessed risk; and
- policy - developing the overarching food policy framework to guide all parts of the system.

The Council of Australian Governments (COAG) in Nov 2000 reached a new intergovernmental food agreement in response to the Blair Review. In July 2001 legislation was passed that established the new statutory authority, Food Standards Australia New Zealand (FSANZ) to replace ANZFA..

At around the same time (1999), the Commonwealth Government referred the Food Standards Code (Code) for review under National Competition Policy. The Code was identified by the Government as restricting competition and imposing costs on business.

The review committee found that the Code did act to restrict competition. While the Code achieved its objectives, particularly the protection of public health and safety, it also imposed substantial and increasing costs on industry and government.

The review committee undertook an analysis of regulatory options, as required by National Competition Policy, and recommended a more cost-effective means to achieve these objectives, through a new Code based on minimum effective regulation principles.

The review committee also noted that the Australia New Zealand Food Standards Council adopted a new Code in November 2000 which incorporated many of their recommendations. The new Code was an outcome of a standard-by-standard review of the Food Standards Code, undertaken by the Australia New Zealand Food Authority since 1994.

The objectives of the Code review were to:

- Reduce the level of prescriptiveness of standards to facilitate innovation by allowing wider permission on the use of ingredients and additives, but with consideration of the possible increased need for consumer information.
- Develop standards that are easier to understand and make amendment more straightforward.
- Replace standards that regulate individual foods with standards that apply across all foods or a range of foods.

- Consider the possibility of industry codes of practice as an alternative to regulation.
- Facilitate harmonisation of food standards between Australia and New Zealand.
- Ensure that duplicative or overlapping regulatory requirements are avoided where possible.

The outcome of these multiple changes were the separation of food policy development from food regulation setting, the establishment of whole of government(s) views when considering food policy, and the replacement of the old food standards code with a streamlined Code in December 2002.

The structural changes established the:

Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC)

The Ministerial Council comprises of Ministers representing the Australian (Commonwealth and State/Territory) and New Zealand Governments. While the new Ministerial Council was based upon the existing Council of Health Ministers, other portfolio Ministers with an interest in issues such as primary production, consumer affairs, food processing or trade participate in the Ministerial Council with each jurisdiction confined to one vote. All jurisdictions have nominated a particular Minister as their lead Minister on the Ministerial Council.

The primary role of the Ministerial Council is to establish the policy framework for the development and review of food standards for Australia and New Zealand by Food Standards Australia New Zealand. The Ministerial Council is chaired by the Commonwealth Minister for Health (or Parliamentary Secretary) with secretariat services provided by the Commonwealth Department of Health and Ageing.

Food Regulation Standing Committee (FRSC)

FRSC comprises heads of Departments for which the respective members of the Ministerial Council have responsibility, as well as the Australian Local Government Association. FRSC provides advice to the Ministerial Council on the development of policy relating to the regulation of food. FRSC is chaired by the Secretary of the Commonwealth Department of Health and Ageing.

Implementation Sub-Committee (ISC)

ISC comprises heads of the appropriate Australian (Commonwealth and State/Territory) and New Zealand inspection and enforcement agencies. Local government is also represented through the Australian Local Government Association.

ISC is responsible for developing implementation policy and oversees the development and implementation of a consistent approach across jurisdictions to enforcing food regulation and standards, regardless of whether food is sourced from domestic producers, export-registered establishments or from imports.

APPENDIX C: SENATE AMENDMENTS TO THE FSANZ ACT (ANZFA AMENDMENT BILL 2001)

The major Senate changes to the ANZFA Amendment Bill 2001 took place on 22-23 May 2001. The House of Representatives also made a number of “corrective” amendments to these amendments – the Senate accepted these amendments on 28 May 2001 – the Senate Hansard for that day lists these Government amendments.

OPPOSITION AMENDMENTS

The major changes to the ANZFA Amendment Act 2001 dictated by the opposition in the Senate were -

C.1 PRECAUTIONARY PRINCIPLE

Subsections 10(4) and 10(5) of the current Act, which have the effect of expanding the concept of “best available scientific evidence” to incorporate a sort of “precautionary principle”, allowing less than “best available scientific evidence” for measures seen to be protective rather than permissive. See Senate Hansard 22 May 2001, pp.2395ff.

(4) Where the Authority considers that the best available scientific evidence referred to in paragraph (2)(a) is insufficient, the Authority may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent scientific information. In such cases, the Authority must take all reasonable steps to obtain the information necessary for a more objective risk analysis and a review of the sanitary and phytosanitary measures, to be undertaken within a reasonable period of time.

(5) For the purposes of this section, a sanitary or phytosanitary measure means any measure applied:

- a. to protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or
- b. to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; or
- c. to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- d. to prevent or limit other damage from the entry, establishment or spread of pests; and includes:
 - e. any relevant law, decree, regulation, requirement or procedure, including end product criteria; and
 - f. processes and production methods; and
 - g. testing, inspection, certification and approval procedures; and
 - h. quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; and

- i. provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and
- j. packaging and labelling requirements directly related to food safety.

C.2 POWER OF REVIEW OF REGULATORY DECISIONS

The power given to the Council in section 23 of the current Act, particularly in s.23(1)(ca), to amend draft variations to the Code proposed by FSANZ (after two Council reviews), where the government intended only that it have the power to accept or reject such variations. A number of consequential amendments in ss.11A, 23 and 23A follow from this amendment. See Senate Hansard of 22 May 2001, pp.24002ff.

23 Council may amend or reject draft after second review

- (1) If the Authority notifies the Council that the Authority has:
 - (a) made a decision under paragraph 22(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or
 - (b) made a decision under paragraph 22(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments;
 - 1. the Council must, within 60 days after the notification:
 - (c) inform the Authority that the Council does not intend to amend or reject the draft; or
 - (d) (ca) by written instrument, amend the draft; or
 - (e) reject the draft.

C.3 PRINT VS INTERNET FOR PUBLISHING DECISIONS

The retention of mandatory newspaper advertising in relation to-

- (a) the outcome of Council decisions;
- (b) decisions in relation to "urgent" applications and proposals, or "public health and safety" proposals;

Under the original Bill, most information would be provided over the internet. See Senate Hansard of 23 May 2001, pp.24143ff.

C.4 APATHY EQUALS ASSENT RULE AFTER SECOND REVIEW

The requirement that the Council must notify the Authority of its decision in relation to a draft variation. The Government proposal was to the effect that the Council could, if it wished, give such a notice, but that if no notice was given within a specified time, the draft variation would be considered to have been approved by the Council. This "apathy equals assent" rule was implemented in a number of sections, but most notably by changing "may" to "must" in s.23(1):

23 Council may amend or reject draft after second review

(1) If the Authority notifies the Council that the Authority has:

(a) made a decision under paragraph 22(6)(a) to re-affirm the Authority's approval of a draft standard or variation; or

(b) made a decision under paragraph 22(6)(b) to re-affirm the Authority's approval of a draft standard or variation, subject to amendments;

the Council must, within 60 days after the notification:

(c) inform the Authority that the Council does not intend to amend or reject the draft; or

(ca) by written instrument, amend the draft; or

(d) reject the draft.

See Senate Hansard of 23 May 2001, pp.24144ff.

C.5 CHANGES TO COMPOSITION OF FSANZ BOARD

The composition and appointment of the FSANZ Board and the qualifications and length of service of persons appointed to it were completely rewritten in the Senate, and then again by the House of Representatives. See Senate Hansard 23 May 2001 pp.24149 – 24167. (Attachment 1)

C.6 THE STANDARDS / POLICY SPLIT

Section 10(2)(e) of the current Act provides that, in developing Standards, FSANZ must take into account “any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority”. This is supplemented with a requirement (in s.10(3)) to publish such guidelines and a requirement (in s.10(3A)) that guidelines not be inconsistent with FSANZ's statutory objectives in s.10(1). These provisions were all added as part of the 1991 Amendment Bill.

Clauses (2)(e) and (3) were part of the original Government Bill. Clause (3A) is the result of a government amendment in the House of Representatives, with a more chequered history.

In the Senate, an opposition amendment was passed to insert a specific clause into the FSANZ Act relating to Council directions. It provided that the Council could issue policy directions, that the directions had to be consistent with the FSANZ Act statutory objectives, and the directions would be disallowable instruments (i.e. subject to Senate review and approval).

The House of Representatives removed this new clause, but reinstated, in a new clause 10(3A), the requirement that policy guidelines be consistent with the statutory objectives.

The Senate (in its final all-night sitting before its Session break) agreed to accept this change.

While most attention was directed to the appropriateness (or otherwise) of Senate review of policy guidelines, the first part of the Senate amendment was also something of a close call for the Council – a clause stating that the Council may issue policy directions would mean that a decision to issue directions would therefore be “a decision made under an enactment”, and so susceptible to judicial review.

ATTACHMENT 1 TO APPENDIX B - CHANGES TO FSANZ BOARD COMPOSITION

| | <i>Original Bill</i> | <i>After Senate</i> | <i>After House of Reps (Final Bill)</i> |
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| Composition | <p>(1) The Board consists of:</p> <p>(a) a Chairperson; and</p> <p>(b) the Chief Executive Officer; and</p> <p>(c) 2 members nominated by the New Zealand lead Minister on the Council; and</p> <p>(d) a member with a background in consumer rights; and</p> <p>(e) between 1 and 5 other members.</p> | <p>(1) The Board consists of:</p> <p>(a) a Chairperson; and</p> <p>(b) the Chief Executive Officer; and</p> <p>(c) 2 members nominated by the New Zealand lead Minister on the Council; and</p> <p>(d) a member nominated by consumer organisations; and</p> <p>(e) a member nominated by the National Health and Medical Research Council; and</p> <p>(f) 4 members nominated by scientific and public health organisations; and</p> <p>(g) 2 members nominated by food industry organisations or public bodies.</p> | <p>(1) The Board consists of:</p> <p>(a) a Chairperson; and</p> <p>(b) the Chief Executive Officer; and</p> <p>(c) 2 members nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and</p> <p>(ca) one member nominated by the New Zealand lead Minister on the Council for the purposes of this paragraph; and</p> <p>(d) a member nominated by consumer organisations; and</p> <p>(e) a member nominated by the National Health and Medical Research Council; and</p> <p>(f) 3 members nominated by organisations, or public bodies, established for purposes relating to science or public health; and</p> <p>(g) 2 members nominated by organisations, or public bodies, established for purposes relating to the food industry.</p> |

The size of the Board has increased from 10 to 12, and its composition is now prescriptive as to interest rather than being flexible. New Zealand representation is 3 out of 12 rather than 2 out of 5.

Attachment 1 Changes to composition of FSANZ Board Cont.

| | <i>Original Bill</i> | <i>After Senate</i> | <i>After House of Reps (Final Bill)</i> |
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| Appointment | <p>*Members are appointed by the Minister</p> <p>*Before appointing a person as a member, the Minister must consult with the Council.</p> | <p>(1A) (repealed)</p> <p>(1B) The Minister may appoint a person as a member mentioned in paragraph (1)(a), (d), (e), (f) or (g) only if the Council has agreed to the appointment.</p> <p>(2) Before appointing a person as a member mentioned in paragraph (1)(c), the Minister must consult with the Council.</p> | <p>(1A) A member mentioned in paragraph (1)(a), (c), (ca), (d), (e), (f) or (g) is to be appointed by the Minister.</p> <p>(1B) The Minister may appoint a person as a member mentioned in paragraph (1)(a), (d), (e), (f) or (g) only if the Council has agreed to the appointment.</p> <p>(2) Before appointing a person as a member mentioned in paragraph (1)(c) or (ca), the Minister must consult with the Council.</p> |

The Council must now AGREE to appointments, rather than just being consulted about them (except in relation to the NZ nominated members).

Attachment 1 Changes to composition of FSANZ Board Cont.

| | <i>Original Bill</i> | <i>After Senate</i> | <i>After House of Reps (Final Bill)</i> |
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| Qualifications | | <p>(3) The Minister may appoint a person as a member mentioned in paragraph (1)(a), (c) or (f) only if:</p> <p>(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:</p> <ul style="list-style-type: none"> (i) public health; (ii) consumer affairs; (iii) food science; (iv) food allergy; (v) human nutrition; (vi) medical science; (vii) microbiology; (viii) food safety; (ix) biotechnology (x) veterinary science; and <p>(b) the person has been nominated by a professional association or public body prescribed by the regulations for the purposes of each subparagraph in paragraph (a).</p> <p>(4) The Minister may appoint a person as a member mentioned in paragraph (1)(g) only if:</p> <p>(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one</p> | <p>(2B) The Minister may appoint a person as a member mentioned in paragraph (1)(a) or (c) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:</p> <ul style="list-style-type: none"> (a) public health; (b) consumer affairs; (c) food science; (d) food allergy; (e) human nutrition; (f) medical science; (g) microbiology; (h) food safety; (i) biotechnology; (j) veterinary science; (k) the food industry; (l) food processing or retailing; (m) primary food production; (n) small business; (o) international trade; (p) government; (q) food regulation. <p>(2C) The Minister may appoint a person as a member mentioned in paragraph (1)(ca) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:</p> <ul style="list-style-type: none"> (a) public health; (b) consumer affairs; (c) food science; (d) food allergy; |

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| | | <p>or more of the following fields: (i) the food industry; (ii) food processing or retailing; (iii) primary food production; (iv) small business; (v) international trade; (vi) government; (vii) food regulation; and</p> <p>(b) the person has been nominated by a professional association or public body prescribed by the regulations for the purposes of each subparagraph in paragraph (a).</p> | <p>(e) human nutrition; (f) medical science; (g) microbiology; (h) food safety; (i) biotechnology; (j) veterinary science.</p> <p>(3) The Minister may appoint a person as a member mentioned in paragraph (1)(f) only if:</p> <p>(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields: (i) public health; (ii) consumer affairs; (iii) food science; (iv) food allergy; (v) human nutrition; (vi) medical science; (vii) microbiology; (viii) food safety; (ix) biotechnology; (x) veterinary science; and</p> <p>(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of: (i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or (ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and (c) the person has been so nominated.</p> <p>(4) The Minister may appoint a person as a member</p> |
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| | | | <p>mentioned in paragraph (1)(g) only if:</p> <ul style="list-style-type: none">(a) the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:<ul style="list-style-type: none">(i) the food industry;(ii) food processing or retailing;(iii) primary food production;(iv) small business;(v) international trade;(vi) government;(vii) food regulation; and(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:<ul style="list-style-type: none">(i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or(ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and(c) the person has been so nominated. |
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The section is now quite prescriptive – but this is all a corollary to the entrenchment of interests in the FSANZ Board (see composition above).

Attachment 1 Changes to composition of FSANZ Board Cont.

| | <i>Original Bill</i> | <i>After Senate</i> | <i>After House of Reps (Final Bill)</i> |
|-----------------------|--|--|--|
| Length of Appointment | <p>41 (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.</p> <p>(4) A person appointed as a member is eligible for reappointment</p> | <p>41 (2) A member holds office for a period of 4 years.</p> <p>(4) A person appointed as a member is eligible for reappointment for a second term but must not be reappointed for a third or subsequent term.</p> | <p>41 (2) A member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.</p> <p>(4) A person appointed as a member is eligible for reappointment for a second term but must not be reappointed for a third or subsequent term.</p> |

The effect is to limit Board membership to two terms.

AFGC MEMBERS AS AT 14 SEPTEMBER 2005

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| AAB Holdings Pty Ltd | Lion Nathan Limited | Associate members |
| Arnott's Biscuits Ltd | Manildra Harwood Sugars | Accenture |
| Snack Foods Ltd | MasterFoods Australia New Zealand | Amcor Fibre Packaging |
| The Kettle Chip Company Pty Ltd | Food | A T Kearney Pty Ltd |
| Asia-Pacific Blending Corporation Pty Ltd | Petcare | CAS |
| Australia Meat Holdings Pty Ltd | Snackfood | CHEP Asia-Pacific |
| Australian Pacific Paper Products | Mayne Healthcare Pty Ltd | CoreProcess (Australia) Pty Ltd |
| Beak & Johnston Pty Ltd | McCormick Foods Australia Pty Ltd | Dairy Australia |
| Berri Limited | Merino Pty Ltd | Exel (Australia) Logistics Pty Ltd |
| BOC Gases Australia Ltd | Merisant Manufacturing Australia Pty Ltd | Focus Information Logistics Pty Ltd |
| Bonland Dairies Pty Ltd | National Foods Ltd | Food Liaison Pty Ltd |
| Boots Healthcare Australia Pty Ltd | Nerada Tea Pty Ltd | Foodbank Australia Limited |
| Bronte Industries Pty Ltd | Nestlé Australia Ltd | IBM Business Consulting Services |
| Bulla Dairy Foods | Nestlé Foods & Beverages | innovations & solutions |
| Bundaberg Sugar Ltd | Nestlé Confectionery | KPMG |
| Cadbury Schweppes Asia Pacific | Nestlé Ice Cream | Legal Finesse |
| Campbell's Soup Australia | Nestlé Chilled Dairy | Linfox Australia Pty Ltd |
| Cantarella Bros Pty Ltd | Nestlé Nutrition | Meat and Livestock Australia Ltd |
| Cerebos (Australia) Ltd | Foodservice & Industrial Division | Minter Ellison Lawyers |
| Christie Tea Pty Ltd | Novartis Consumer Health Australasia Pty Ltd | Monsanto Australia Ltd |
| Clorox Australia Pty Ltd | NutraSweet Australia Pty Ltd | Novozymes Australia |
| Coca-Cola Amatil (Aust) Ltd | Nutricia Australia Pty Ltd | OTS Search |
| Colgate-Palmolive Pty Ltd | Nutrinova (Australasia) Pty Ltd | PricewaterhouseCoopers |
| Coopers Brewery Ltd | Ocean Spray International, Inc | Sue Akeroyd & Associates |
| Dairy Farmers Group | Parmalat Australia Ltd | Swire Cold Storage |
| Danisco Australia Pty Ltd | Patties Foods Pty Ltd | Touchstone Consulting Australia Pty Ltd |
| Devro Pty Ltd | Peanut Company of Australia Ltd | Wiley & Co Pty Ltd |
| DSM Food Specialties Australia Pty Ltd | Pfizer Consumer Healthcare | |
| DSM Nutritional Products | Prepared Foods Australia | |
| Fibrisol Services Australia Pty Ltd | Procter & Gamble Australia Pty Ltd | |
| Firmenich Ltd | PZ Cussons Australia Pty Ltd | |
| Fletchers Foods Pty Ltd | Quality Bakers Australia Pty Ltd | |
| Foster's Group Limited | Quality Ingredients Ltd | |
| General Mills Australia Pty Ltd | Prima Herbs and Spices | |
| George Weston Foods Ltd | Reckitt Benckiser (Australia) Pty Ltd | |
| AB Food and Beverages Australia | Ridley Corporation Ltd | |
| AB Mauri | Cheetham Salt Limited | |
| Cereform/Serrol | Sanitarium Health Food Company | |
| GWF Baking Division | Longa Life Vegetarian Products Pty Ltd | |
| GWF Meat & Dairy Division | Sara Lee Australia | |
| George Weston Technologies | Douwe Egberts | |
| Jasol | Sara Lee Bakery | |
| Weston Cereal Industries | SCA Hygiene Australasia | |
| Gillette Australia Pty Ltd | Schwarzkopf and Henkel | |
| GlaxoSmithKline Consumer Healthcare | Sensient Technologies Australia Corp Pty Ltd | |
| Golden Circle Ltd | Sigma Pharmaceuticals Pty Ltd | |
| Goodman Fielder Ltd | Simplot Australia Pty Ltd | |
| Uncle Toby's | SPC Ardmona Operations Ltd | |
| Meadow Lea Foods | Specialty Cereals Pty Ltd Spicemasters | |
| GF Commercial | of Australia Pty Ltd | |
| Green's Foods Ltd | Stuart Alexander & Co Pty Limited | |
| H J Heinz Company Australia Ltd | Sugar Australia Pty Ltd | |
| Hans Continental Smallgoods Pty Ltd | Sunbeam Foods Pty Ltd | |
| Harvest FreshCuts Pty Ltd | SunRice | |
| Heimann Foodmaker Group | Symrise Pty Ltd | |
| Hoyt Food Manufacturing Industries Pty Ltd | Tetley Australia Pty Ltd | |
| Johnson & Johnson Pacific Pty Ltd | The Smith's Snackfood Company | |
| Kellogg (Australia) Pty Ltd | Unilever Australasia | |
| Day Dawn Pty Ltd | Waters Trading Pty Ltd | |
| Kerry Ingredients Australia Pty Ltd | Wyeth Australia Pty Ltd | |
| Kimberly-Clark Australia Pty Ltd | Yakult Australia Pty Ltd | |
| Kraft Foods Asia Pacific | | |

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