

Document Schedule

1. Final financial modelling data used in the ABC model to determine the cost recovery revenue increase.

The last document or documents that set out how corporate overheads have been estimated and apportioned in the ABC model to determine the cost recovery revenue increase.

Item	Related documents	Pages	Full / Partial release
1.1	Spread sheet	4	Full

2. final assumptions used in the ABC model to determine the cost recovery revenue increase.

Item	Related documents	Pages	Full / Partial release
2.1	Final report	40	Available on website ¹

3. All material given or presented to the FSANZ Board for their 5-6 December 2012 meeting relating to cost recovery arrangements

Item	Related documents	Pages	Full / Partial release
3.1	Submissions received (x 12) (18 June – 30 July 12)	N/A	Available on website ²
3.2	Decision paper	12	Full
3.3	Draft Final Report	37	Full



¹ <http://www.foodstandards.gov.au/foodstandards/changingthecode/informationforapplicants/fsanzscostrecoveryar5707.cfm>

² <http://www.foodstandards.gov.au/foodstandards/changingthecode/informationforapplicants/fsanzscostrecoveryar5707.cfm>

Classification	Increment	Annual salary	28% oncost v+f costs	Total	Billable Hours 5.5X220	costs/hour	
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-3	76921	98458.88	95,602.32	194,061.20	1210	160.3812
AP56	AP56-3	76921	98458.88	95,602.32	194,061.20	1210	160.3812
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-3	76921	98458.88	95,602.32	194,061.20	1210	160.3812
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56	AP56-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
AP56P	AP564P	77224.76	98847.69	95,602.32	194,450.01	1210	160.7025
AP56P	AP564P	68399.07	87550.81	95,602.32	183,153.13	1210	151.3662
AP56P	AP562P	44840.82	57396.25	95,602.32	152,998.57	1210	126.4451
AP56P	AP563P	76921	98458.88	95,602.32	194,061.20	1210	160.3812
AP56P	AP563P	37675.59	48224.76	95,602.32	143,827.08	1210	118.8654
AP56P	AP561P	42675.21	54624.27	95,602.32	150,226.59	1210	124.1542
AP56P	AP562P	67261.22	86094.36	95,602.32	181,696.68	1210	150.1625
AP5B5	AP5B5	66417	85013.76	95,602.32	180,616.08	1210	149.2695
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-1	71335.2	91309.06	95,602.32	186,911.38	1210	154.4722
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-1	89169	114136.3	95,602.32	209,738.64	1210	173.3377
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-1	89169	114136.3	95,602.32	209,738.64	1210	173.3377
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-2	94250	120640	95,602.32	216,242.32	1210	178.7127
EXE1	EXE1-1	89169	114136.3	95,602.32	209,738.64	1210	173.3377
EXE1P	EXE13P	81084.9	103788.7	95,602.32	199,390.99	1210	164.7859
EXE1P	EXE13P	48650.94	62273.2	95,602.32	157,875.52	1210	130.4756
EXE1P	EXE12P	76938.78	98481.64	95,602.32	194,083.96	1210	160.4
EXE1P	EXE13P	54056.6	69192.45	95,602.32	164,794.77	1210	136.194
EXE1P	EXE13P	47299.52	60543.39	95,602.32	156,145.71	1210	129.046
EXE1P	EXE12P	73091.84	93557.56	95,602.32	189,159.88	1210	156.3305
EXE1P	EXE13P	79463.2	101712.9	95,602.32	197,315.22	1210	163.0704
NZL6	NZL6-2	86366	110548.5	95,602.32	206,150.80	1210	170.3726
NZL6	NZL6-5	94245	120633.6	95,602.32	216,235.92	1210	178.7074
NZL6	NZL6-5	94245	120633.6	95,602.32	216,235.92	1210	178.7074
NZL6	NZL6-2	86366	110548.5	95,602.32	206,150.80	1210	170.3726

The figures below represent the fixed and variable costs (corporate and support costs).
Staff

Executive	2150384.93	13
Ops	2735117.24	
ICT	1128403.73	5
Finance	395177.93	3
I&R	197493.04	1
S&A	185429.18	1
Board	634108	0
Depreciatic	605000	0
Comms	717525.32	7
	8748639.37	
v+f	8,986,619.37	30
Salary	11,031,605	
Total budget	20,0182,24.37	
	181.0784656	

EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	79463.2	101712.9	95,602.32	197,315.22	1210	163.0704
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
EXE1	EXE1-3	99329	127141.1	95,602.32	222,743.44	1210	184.0855
APS6	APS6-4	81086	103790.1	95,602.32	199,392.40	1210	164.7871
APS6	APS6-1	71287	91247.36	95,602.32	186,849.68	1210	154.4212
APS6	APS6-2	73240	93747.2	95,602.32	189,349.52	1210	156.4872
NZEL1	NZEL14	114845	147001.6	95,602.32	242,603.92	1100	220.549
NZEL1	NZEL12	104545	133817.6	95,602.32	229,419.92	1100	208.5636
NZEL1	NZEL12	104545	133817.6	95,602.32	229,419.92	1100	208.5636
NZEL1	NZEL14	114845	147001.6	95,602.32	242,603.92	1100	220.549
NZEL1	NZEL13	109695	140409.6	95,602.32	236,011.92	1100	214.5563
NZEP1	NZEP14	71875.78	92001	95,602.32	187,603.32	1100	170.5485
APS5P	APS53P	56571.43	72411.43	95,602.32	168,013.75	1210	138.8543
APS5P	APS53P	56571.43	72411.43	95,602.32	168,013.75	1210	138.8543
APS5P	APS51P	39429.18	50469.35	95,602.32	146,071.67	1210	120.7204

Classificati	Increment	Annual salary	38% v+f costs	Total	Billable Hours 5X220	costs/hour	
NZEL2	NZEL25	130295	179807.1	95,602.32	275,409.42	1100	250.3722
NZEL2	NZEL24	128235	176964.3	95,602.32	272,566.62	1100	247.7878
NZEL2	NZEL24	128235	176964.3	95,602.32	272,566.62	1100	247.7878
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
EXE2	EXE2-6	83042.56	114598.7	95,602.32	210,201.05	1100	191.0919
EXE2	EXE2-3	118325	163288.5	95,602.32	258,890.82	1100	235.3553
EXE2	EXE2-3	118325	163288.5	95,602.32	258,890.82	1100	235.3553
EXE2	EXE2-1	105266	145267.1	95,602.32	240,869.40	1100	218.9722
EXE2	EXE2-1	105266	145267.1	95,602.32	240,869.40	1100	218.9722
EXE2	EXE2-5	127512	175966.6	95,602.32	271,568.88	1100	246.8808
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
EXE2	EXE2-3	118325	163288.5	95,602.32	258,890.82	1100	235.3553
EXE2	EXE2-3	118325	163288.5	95,602.32	258,890.82	1100	235.3553
EXE2	EXE2-5	127512	175966.6	95,602.32	271,568.88	1100	246.8808
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
EXE2B	EXE2PB	56047.61	77345.7	95,602.32	172,948.02	1100	157.2255
EXE2P	EXE23P	57955.1	79978.04	95,602.32	175,580.36	1100	159.6185
EXE2P	EXE23P	107281.3	148048.2	95,602.32	243,650.56	1100	221.5005
EXESPC	EXESPC	105899	146140.6	95,602.32	241,742.94	1100	219.7663
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
EXE2	EXE2-5	127512	175966.6	95,602.32	271,568.88	1100	246.8808
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
EXE2	EXE2-6	129754	179060.5	95,602.32	274,662.84	1100	249.6935
TOTAL	Salary	8412044	Oncosts	v+f costs	Total	Total Hours	av cost/hour
			11031605	8,986,618.08	20,018,223.01	110,550.00	181.0785

NON RGS

NZSES1	NZSES1	190753
PRS	PRS15	147737
PRS	PRS15	147737
SES1A	SES1A	156956
SES1A	SES1A	156956
SES1A	SES1A	160415
SES2A	SES2A	182756
SES2A	SES2A	201753

LO1	LO1-10	110107
LO2	LO2-1	118444
LO2B	LO2B	101748

APS3	APS3-1	41444.8
APS3P	APS34P	23320
APS4	APS4-4	63622
APS4	APS4-4	63622
APS4	APS4-4	63622
APS4	APS4-1	57740
APS4	APS4-1	57740
APS4	APS4-3	61123
APS4	APS4-4	55139.07
APS4	APS4-4	61077.12
APS4	APS4-4	63622
APS4	APS4-2	59578
APS4	APS4-1	57740
APS4P	APS42P	36476.33
APS5	APS5-2	66417

AP55	AP55-3	69300
AP55	AP55-3	69300
AP55	AP55-1	64401
AP55	AP55-3	69300
AP55	AP55-3	69300
AP55	AP55-1	64401
AP55P	AP553P	56571.43
AP55P	AP553P	56571.43
AP55P	AP551P	39429.18

NZL4	NZL4-4	67465
NZL4	NZL4-1	57340

EXE2	EXE2-6	129754
EXE2	EXE2-5	127512
EXE2	EXE2-6	129754
EXE2	EXE2-6	129754
EXE2	EXE2-6	129754
EXE2	EXE2-4	122284
EXE2	EXE2-6	129754
EXE2	EXE2-6	129754
EXE2	EXE2-5	127512
EXE2	EXE2-6	129754
EXE2	EXE2-3	118325
EXE2	EXE2-6	129754

EXE1	EXE1-3	99329
EXE1	EXE1-3	79463.2
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-2	94250
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	99329
EXE1	EXE1-3	79463.2
EXE1	EXE1-2	94250
EXE1	EXE1-3	99329

AP56	AP56-4	81086
AP56	AP56-1	71287
AP56	AP56-2	73240
AP56	AP56-4	81086
AP56	AP56-4	81086
		6422766

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December 2012

**Item D2
FSANZ52**

Subject	Cost Recovery Review – Final Report
Paper presenter	Peter May General Manager, Legal and Regulatory Affairs
Recommendations	<p>(a) agree to the following amendments to FSANZ’s cost recovery arrangements to commence on 1 July 2013:</p> <ul style="list-style-type: none">(i) increase the hourly charge from \$115 to \$180 per hour.(ii) adjust the levels for the general procedure to:<ul style="list-style-type: none">• reduce the maximum hours for level 2 by 150 hours to 500 hours• add a new level 3 with a maximum number of hours of 650 hours• reduce the maximum hours for the new level 4 by 200 hours to 800 hours• reduce the minimum hours for the new level 5 by 200 hours to 800 hours.(iii) allow the charges for levels 3, 4 and 5 under the general procedure to be paid in instalments(iii) change the reference from a ‘charge’ to ‘deposit’ in relation to the administrative charge, to more accurately reflect the fact that this is a ‘fee for service’. <p>(b) approve the additional amendments being proposed to the FSANZ Regulations to take effect on the date of registration on the Federal Register of Legislative Instruments (FRLI):</p> <ul style="list-style-type: none">(i) repeal of Regulation 10(ii) amendments to Schedules 1, 2 and 2A (at Attachment 2) <p>(c) note that following Board approval, the process for amending the FSANZ Regulations will proceed.</p> <p>(d) note the proposed arrangements for cost recovery of health claims applications (yellow highlight in Attachment 1):</p> <ul style="list-style-type: none">(i) apply an hourly charge of \$180 per hour in line with other applications(ii) apply the same levels as those for other applications(iii) allow the same arrangements for instalments and refunds as for other applications

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	<ul style="list-style-type: none"> (iv) apply a \$14,000 administrative deposit to cover costs relating to newspaper advertising, FRLI registration, New Zealand gazettals and those arising from the remuneration of members of the expert committee (v) prescribe 9 months as the consideration period for a health claim application. <p>(f) note the draft final report which will be released to the public following the Board’s final consideration</p> <p>(g) agree to consider approval of the proposed arrangements for cost recovery of health claims applications and the draft final report out-of-session as soon as possible after the close of submissions on 6 December 2012.</p>
<p>Key strategic / critical / sensitive issues for Board to consider or discuss</p>	<p>Cost recovery review</p> <ul style="list-style-type: none"> • As expected, most of the 12 submissions expressed strong opposition to the proposed increase in the hourly charge citing effects on company budgets, innovation, R&D, trade etc. • The levels for the general procedure have been adjusted to partly alleviate the impact of the proposed fees. <p>Cost recovery of health claims applications</p> <ul style="list-style-type: none"> • A verbal update of issues raised by submitters will be given at the meeting.
<p>Stakeholder views</p>	<ul style="list-style-type: none"> • Numerous areas of concern were raised apart from the size of the increase (see Attachment A of the draft report), including: <ul style="list-style-type: none"> – the cost methodology developed by FSANZ to calculate the hourly cost. More detail on the data used and the justification for the increase was requested. This has been addressed in the report. – the large fees previously charged vs. the eventual large refunds. This has been addressed in the report, particularly through a change in the maximum hours for each level in the General Procedure. – how FSANZ applies the exclusive capturable commercial benefit (ECCB) provisions (not within the scope of this review).

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1. Authority for decision

- (a) Section 153 of the FSANZ Act provides the Governor-General with the power to make regulations.
- (b) FSANZ's power to recover costs is set out in section 146 of the FSANZ Act which provides that the regulations may fix charges for services provided by FSANZ.
- (c) The regulations may also provide for payment by instalments and fix the times at which instalments are paid. Subsection 146(2) specifies that a charge fixed under subsection 146(1) must not be such as to amount to taxation. Subsection 146(3) also specifies that this section does not apply to services or facilities that FSANZ provides under contract.
- (c) Subsection 146(6) stipulates that a charge may only be fixed in relation to an application to develop or vary a food regulatory measure if:
 - (i) the development or variation of the standard would confer an ECCB on the applicant; or
 - (ii) the applicant has elected to have the consideration of the application expedited.

Regulations 7, 7A, 7B, 8 and 9 and Schedules 3 and 4 of the *Food Standards Australia New Zealand Regulations 1994* (the FSANZ Regulations) establish the rates of charging and the process for refunds.

- (d) Subsection 4(1) of the FSANZ Act provides for FSANZ to prescribe appropriate government agencies. Regulation 3 refers to this definition and Schedule 1 of the FSANZ Regulations prescribes the agencies.
- (e) Paragraph 114(4)(b) of the FSANZ Act provides for FSANZ to prescribe appropriate authorities in relation to the release of confidential information. Regulation 6 refers to this paragraph and Schedule 2 of the FSANZ Regulations prescribes the authorities.
- (f) Paragraphs 116(3)(b) and (4)(b) of the FSANZ Act provides for FSANZ to prescribe appropriate organisations and public bodies in Australia and New Zealand from which to call for nominations to the FSANZ Board. Regulation 6A refers to these paragraphs and Schedule 2A of the FSANZ Regulations prescribes the organisations and public bodies.
- (g) Subsection 109(3) provides for FSANZ to prescribe a period of shorter than 12 months for the consideration of high level health claims applications.

2. Issues

The accuracy of FSANZ's cost recovery fee structure for processing applications is critical to ensuring that the fees charged are consistent with the Australian Government's cost recovery policy. In undertaking this review, FSANZ has completed a detailed examination of the costs it actually incurs and the methodology underpinning the calculation of charges that are set in the FSANZ Regulations.

The review focused on addressing the following issues:

- What costs should the charges include?
- How should charges be structured?
- How should costs be calculated and allocated?

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2.1 *FSANZ Budget*

73% of applications accepted onto FSANZ's Work Plan are cost-recovered. Since 1 October 2007, only 15 out of a total of 56 applications accepted onto the Work Plan did not incur fees. The remaining applications (41) were cost-recovered, either because FSANZ considered the ECCB provision applied (27), or the applicant chose to expedite consideration of their application (14).

In 2010–11, actual cost recovery fees taken to revenue was \$453,000. In 2011–12, \$416,157. In 2012–13, FSANZ estimates this figure will fall to about \$300,000. These figures are only for those hours actually expended by staff in those financial years.

For 2012–13, actual cost recovery income (taking account of any refunds) is estimated to be about 1.3% of total budget. This is the less than for 2011–12, and continues the general decreasing trend over recent years. See Section 4.1 of the draft Report for further information.

Since 2000, FSANZ has been under-recovering the real cost of assessing an application and using its budgetary appropriation to subsidise applicants' costs for cost-recovered applications. The level of cross-subsidisation has averaged 48% of the actual cost between 2008–09 and 2011–12, and is estimated to reach 57% of the forecasted cost in 2012–13, if there is no change to the fee rate. See Section 6.1 of the draft report for further information.

2.2 *Methodology*

The review found that the basic costing methodologies used in 2010 and in previous years were inadequate and did not capture the full cost of assessing an application. Continuation of this situation is considered unacceptable for budgetary purposes and failing the intent of Government in the 1999 amendments to the FSANZ Act to introduce full cost recovery for relevant applications. See 6.1 of the draft report for further information.

To accurately capture both direct and indirect costs (as recommended under the Cost Recovery Guidelines) incurred in standards development FSANZ applied an activity-based costing (ABC) methodology. The methodology is consistent with the Guidelines and similar methodologies are used by other Australian Government agencies. FSANZ consulted with a number of other agencies with regulatory functions during the development of its methodology noting that as every agency is different in terms of what inputs are used and how they are linked to activities used to produce outputs, there cannot be a 'one size fits all'. Therefore, methodologies vary widely as allocated corporate costs and support costs (overhead costs) differ across agencies.

The majority of FSANZ's costs are for employee-related costs (salaries) which continue to increase as in other public and private sector organisations. To calculate an hourly charge for use for cost recovery activities, the following components from 2011-12 have been included:

- Salary costs – salaries of those 94 employees directly engaged in performing standard development activities (revenue generating staff or RGS) and related on-costs (superannuation, leave entitlements and ComCare insurance premiums).
- Support and corporate costs – rent and information technology are costs that RGS can control the 'consumption' of, but not the unit price. The allocation of corporate costs such as rent and ICT and depreciation costs related to capital assets is based on relevant cost drivers, including staff numbers, workstations or floor-space. 52 non-RGS who deliver administrative support and governance oversight to the whole agency, including the RGS were included in these costs.

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2.3 Hourly rate

A full cost recovery hourly rate based on the 2011–12 budget has been determined. The rate is \$180, compared with the current hourly rate of \$115.

After consideration of the comments from submitters advocating delaying the introduction of the increased charge, and subject to necessary amendments to the Regulations, the new hourly rate of \$180 is to apply from 1 July 2013, rather than 1 January 2013 as proposed at consultation. This delay gives industry approximately 12 months to plan for the increase from the time FSANZ flagged its intention of increasing the rate in June 2012.

Due to the unexpected delay in releasing the Consultation Paper, the figures used in that paper have been updated in the draft report to reflect the 2012–13 Budget. As costs have increased since 2011–12 and staff numbers are down (although they fluctuate throughout the year), FSANZ has calculated the hourly charge to be approximately \$187 per hour for this financial year.

However, as FSANZ indicated the increase to be \$180 in June, given the large increase already proposed, it is not proposed to increase the figure any further at this time.

As the types of revenue generating staff involved in the assessments of health claims are expected to be similar to those involved with the assessment of other applications, and as the assessment work is broadly similar, in the absence of any data that will permit a more accurate assessment of costs at this time, FSANZ is proposing to charge an hourly fee of \$180. However, in this case, the charge will apply on the date of registration of the amended Regulations on FRLI.

Indicative costs for applicants are outlined in Table 3B of the draft Report.

2.4 Cost recovery levels

FSANZ had access to far more evidence for this review than in 2010, due to the larger number of completed applications. FSANZ staff examined the hours for these projects to ascertain whether there was a need for adjustments to the range of hours for each level and proposes that the present hours for the general procedure levels be amended. The proposed adjustments more closely align the hours required to assess an application with the matters that fall within each level. See Section 7 of the draft report.

It is proposed to:

- make no change to the maximum number of hours allowed for the minor procedure
- adjust the levels for the general procedure
- make no change to the minimum number of hours for an application being assessed under the major procedure
- make no change to the current fee refund policy
- allow the charges to be paid in instalments for levels 3, 4 and 5 under the general procedure and make no change to the current instalment arrangements for the major procedure

For the same reasons as the hourly charge, FSANZ is also proposing to mirror the cost recovery levels within the general procedure for applications for health claims and to review these levels in two years.

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2.5 Administrative cost charge

In 2010, the FSANZ Regulations were amended to introduce a charge to cover the costs previously borne by FSANZ to comply with the statutory publication requirements. These costs are an integral part of the application assessment process and relate to newspaper advertising, New Zealand gazettals and Federal Register of Legislative Instruments requirements.

At the suggestion of the cost recovery team in the Department of Finance and Deregulation (DoFD), it is proposed to change the reference from a 'charge' to 'deposit' to more accurately reflect the fact that this is a fee for service and any unused monies are refunded to an applicant.

For health Claims applications, in addition to the A\$10,000 administrative deposit, an additional deposit of A\$4000 will be charged to cover the costs associated with the payment of fees to external members of the expert committee whose remuneration is established by the Remuneration Tribunal.

To assist in meeting recent additional budgetary cuts, FSANZ is liaising with DoFD to have the legislative requirements to advertise in newspapers removed from the FSANZ Act. This removal is in line with Government policy.

3. Views of major stakeholders

Submissions on the June Consultation paper on the review have been provided separately to the Board. They are also on the FSANZ website. All issues raised in submissions are addressed in Attachment A of the draft report. Major issues are specifically addressed in relevant sections in the draft report.

All submissions on the proposed health claims arrangements will be provided to members once the submission period has closed. Issues raised in these submissions will be addressed in the Draft Report to be considered out-of-session, if the Board agrees to that approach.

5. Additional amendments to the Regulations

5.1 Consideration period for health claims applications

In relation to the consideration period for an application for a high level health claims variation, FSANZ is proposing to prescribe a maximum consultation period of 9 months in the FSANZ Regulations, to mirror the general procedure.

5.2 Regulation 10

Regulation 10 which relates to section 83 of the FSANZ Act (under Division 2A of the FSANZ Act relating to MRLs) is to be repealed.

Since 1 March 2011, the Australian Pesticides and Veterinary Medicines Authority (APVMA) has had the power to amend Schedule 1 of Standard 1.4.2 for maximum residue limits (MRLs). This change implemented the Council of Australian Governments' 'early harvest' reform to streamline the food standards development process for MRL standards. Before these amendments were made, a chemical could be approved for agricultural use by APVMA, but there were significant delays between gazettal of variations to the APVMA MRL Standard and the relevant changes to Standard 1.4.2.

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These amendments significantly changed how Subdivision 2A (including section 83) of the FSANZ Act operates, rendering Regulation 10 obsolete as the provision to which it applies no longer exists. It does not need to be replaced.

The proposed amendments are at Attachment 2.

5.3 *Updating of departmental and organisational names*

In addition, amendments to Schedules 1, 2 and 2A are to be made to reflect changes in departmental responsibilities and names, prescribed authorities, prescribed organisations and public bodies. Some no longer exist.

Schedule 1 lists 'appropriate government agencies'. The term is defined in section 4 of the FSANZ Act and is used in several sections of the FSANZ Act in relation to notifications and calling for submissions. Schedule 2 lists authorities to which confidential information may be disclosed by FSANZ under section 114 of the FSANZ Act. Schedule 2A lists organisations and public bodies from which nominations to the FSANZ Board may be sought under section 116 of the FSANZ Act.

The proposed amendments are at Attachment 2.

4. Risk communication

The final report and submissions will be placed on the FSANZ website following the Board approval and stakeholders advised.

The Parliamentary Secretary for Health and Ageing was advised of the call for submissions and alerted to the potential for industry concern over the price increase. She will also be advised of the Board's decision in relation to the final report, ahead of its public release.

The Department of Health and Ageing has been kept informed throughout the review. It was specifically consulted on the proposed changes to the Schedules and the repeal of Regulation 10.

Approval of the Regulation amendments by the Parliamentary Secretary will then be required ahead of Executive Council consideration in early 2013.

Attachments

1. Draft final report
2. Proposed additional amendments to Schedules 1, 2 and 2A to the FSANZ Regulations

Team Members: Mrs Cathie Humphries, Ms Audrey Gormley, Mr Duncan McGill,
Mr Peter May (Exec sponsor)

Proposed additional amendments to Schedules 1, 2 and 2A to the FSANZ Regulations

Schedule 1 Appropriate government agencies
(regulation 3)

Part 1 Departments of the Commonwealth

Item	Department
1	Department of Agriculture, Fisheries and Forestry
2	Attorney-General's Department Treasury
3	Department of Education, Science and Training
4	Department of Foreign Affairs and Trade
5	Department of Health and Ageing
6	Department of Industry, <u>Innovation, Science, Research and Tertiary Education</u> Tourism and Resources

Part 2 State and Territory authorities

Item	Authority
1	Department of Primary Industries (NSW)
2	NSW Food Authority
3	NSW Health
4	Department of Primary Industries (Vic)
5	Department of Sustainability and Environment (Vic)
6	Department of <u>Business and Innovation</u> , Industry and Regional Development (Vic)
7	Department of <u>Human Services- Health</u> (Vic)
8	Department of <u>Agriculture, Fisheries and Forestry</u> Primary Industries and Fisheries (Qld)
9	Queensland Health
10	Safe Food Queensland
11	Department of Agriculture and Food (WA)
12	Department of Health (WA)
13	Department of Primary Industries and <u>Regions</u> Resources SA
14	Department of Health (SA)
15	Department of Primary Industries, <u>Parks, Water and Environment of Tasmania</u> (Tas)
16	Department of Health and Human Services, Tasmania
17	ACT Health
18	Department of Economic and regional Development of the Northern Territory (NT)
19	Department of Health <u>and Community Services</u> (NT)

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Schedule 2 Prescribed authorities to which confidential commercial information may be disclosed

(regulation 6)

Part 1 Commonwealth authorities

Item	Authority
1	Department of Agriculture, Fisheries and Forestry
2	Treasury Attorney-General's Department
3	Department of Education, Science and Training
4	Department of Families, Community Service and Indigenous Affairs
5	Department of Foreign Affairs and Trade
6	Department of Health and Ageing
7	Department of Industry, <u>Innovation, Science, Research and Tertiary Education</u> Tourism and Resources

Part 2 State and Territory authorities

Item	Authority
1	Department of Primary Industries (NSW)
2	NSW Health
3	NSW Food Authority
4	Department of Human Services <u>Health</u> (Vic)
5	Department of Primary Industries (Vic)
6	Department of <u>Business and Innovation</u> Sustainability and Environment (Vic)
7	Department of Innovation, Industry and regional Development (Vic)
8	Department of <u>Agriculture, Fisheries and Forestry</u> Primary Industries and Fisheries (Qld)
9	Queensland Health
10	Safe Food Queensland
11	Department of Agriculture and Food (WA)
12	Department of Health (WA)
13	Department of Primary Industries and Resources <u>Regions</u> SA
14	Department of Health (SA)
15	Department of Health and Human Services, Tasmania
16	Department of Primary Industries, <u>Parks,</u> Water and Environment of Tasmania <u>(Tas)</u>
17	ACT Health
18	Department of Business, Economic and Regional Development of the Northern Territory
19	Department of Health and Community Services (NT)

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Part 3 New Zealand authorities

Item	Authority
1	Environmental Protection Risk Management Authority
2	Ministry of Health
3	Ministry for Primary Industries of Agriculture
4	New Zealand Food Safety Authority

Schedule 2A Board — prescribed organisations and public bodies from which nominations may be sought

(regulation 6A)

Part 1 Science and public health organisations and public bodies

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

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Item	Organisation or public body	Subparagraph of paragraph 116 (3) (a)
New Zealand organisations and public bodies		
150	Science New Zealand Association of Crown Research Institutes Incorporated	Subparagraphs (i), (ii), (iii), (vi), (vii), (viii) and (ix)
151	Consumer Forum on Food Safety	Subparagraph (ii)
152	Consumer NZ Consumers' Institute of New Zealand Incorporated	Subparagraphs (ii), (v) and (viii)
153	Health Research Council of New Zealand	Subparagraphs (i), (iv), (v), (vi), (vii) and (ix)
154	Maori Women's Welfare League Inc	Subparagraphs (i), (ii) and (viii)
155	National Council of Women of New Zealand (Inc)	Subparagraph (ii)
156	NZBIO New Zealand Biotech 2003 Incorporated	Subparagraph (ix)
157	The Royal Australasian College of Physicians, New Zealand Committee, Faculty of Public Health Medicine	Subparagraphs (i), (v) and (vi)
158	Dietitians NZ New Zealand Dietetics Association (Inc)	Subparagraphs (i), (ii), (iii), (iv), (v) and (viii)
159	The New Zealand Institute of Food Science and Technology Inc	Subparagraphs (iii), (viii) and (ix)
160	New Zealand Medical Association Inc	Subparagraphs (i) and (vi)
161	New Zealand Nutrition Foundation	Subparagraphs (v), (vi) and (viii)
162	The Public Health Association of New Zealand Incorporated	Subparagraphs (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) and (ix)
163	The Royal Society of New Zealand	Subparagraphs (vii) and (ix)

Part 2 Food industry organisations and public bodies

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

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Item	Organisation or public body	Subparagraph of paragraph 116 (4) (a)
	Australia Pty Ltd	
208	National Farmers' Federation Limited	Subparagraphs (iii), (iv), (v) and (vi)
209	Restaurant and Catering Australia	Subparagraphs (i), (iv), (vi) and (vii)
	New Zealand organisations and public bodies	
250	The Grocery Retailers Association National Association of Retail Grocers and Supermarkets of New Zealand Inc	Subparagraphs (i), (ii) and (iv)
251	New Zealand Food & Grocery Council New Zealand Grocery marketers Association (Inc)	Subparagraphs (i), (ii), (iv), (v), (vi) and (vii)
252	New Zealand Retailers Association Incorporated	Subparagraph (ii)

XX Month 2012
[XX-12]

Final Report

Review of cost recovery arrangements for applications

Food Standards Australia New Zealand (FSANZ) has reviewed its cost recovery charging structure for processing applications to amend the *Australia New Zealand Food Standards Code* (the Code). FSANZ committed to a formal review of the cost recovery within two years following the last review in 2009-10

Most of FSANZ's work is budget-funded. Work for which a charge is paid accounted for less than 2% of FSANZ's activities in 2011-12.

Cost recovery charges are applied to applications that result in either an exclusive, capturable commercial benefit for the applicant or where an applicant seeks to have priority given to an application in the FSANZ work plan. The cost recovery regime is established in the FSANZ Act and the charges are set in the FSANZ Regulations.

FSANZ sought submissions on the outcomes of its initial review on 18 June 2012 and 12 submissions were received. The issues raised in the submissions are summarised in Attachment A with FSANZ's response.

Most submissions expressed concern about either the amount of the proposed increase, (56.5%) or the possible effect of cost recovery on innovation in the food industry. FSANZ response to those two matters is:

- The size of the increase to the cost recovery charge is based on an analysis of all costs. Previous analyses of cost recovery have under-estimated the costs associated with application work and have provided a subsidy to work that ought to have been fully cost recovered.
- FSANZ acknowledges the possibility of the hourly charge increase affecting industry innovation but believes the increase is not significant across industry as a whole and therefore will have minimal impact in terms of industry innovation.

In addition, FSANZ's annual income from cost recovery falls well below that considered 'significant' under current Government policy (\$5 million or more). FSANZ is therefore proceeding, in line with current government policy, with the increase to the cost recovery charges. If either the legislation or government policy change, it would be appropriate to further consider possible economic effects. FSANZ will also continue to monitor the situation.

The amendments to the cost recovery arrangements, which are intended to have effect on 1 July 2013, after amendment of the FSANZ Regulations, are:

- an increase in the hourly charge from \$115 per hour to \$180 per hour

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- adjust the levels under the general procedure:
 - no increase in the maximum hours for level 1
 - reduce the maximum hours for level 2 by 150 hours to 500 hours
 - add a new level 3 with a maximum number of hours of 650 hours
 - reduce the maximum hours for the new level 4 by 200 hours to 800 hours
 - reduce the minimum hours for the new level 5 by 200 hours to 800 hours.
- allow the charges to be paid in instalments for levels 3, 4 and 5 under the general procedure
- in relation to the Administrative Charge, change the reference from a 'charge' to 'deposit' to more accurately reflect the fact that this is a 'fee for service'
- arrangements for high level health claim variations including prescribing a consideration period, hourly cost, levels for charging, deposit for statutory notification requirements and gazettals and committee costs with a refund policy to apply similarly to other applications.

Changes to the charges do not apply retrospectively and will only apply to any applications that are received after the amendments to the Regulations have effect.

FSANZ does not intend to change the following cost recovery arrangements:

- the policy of refunding an amount for the difference between the time charged and the time taken in assessing an application
- the maximum number of hours allowed for the minor procedure
- the minimum number of hours for an application being assessed under the major procedure
- the charge of \$AUD10,000 to cover administrative costs
- the refund of any unused monies after all administrative invoices have been paid
- instalment arrangements for the major procedure.

Charging an across-the-board hourly charge for assessing applications is the most efficient and cost-effective way of complying with our cost recovery arrangements. It is relatively easy to calculate, manage payments, track and calculate refunds. To accurately capture both direct and indirect costs (as recommended under the Cost Recovery Guidelines) incurred in standards development FSANZ has applied a simplified activity-based costing (ABC) methodology in which there is only one activity, standards development. The methodology is consistent with the Guidelines.

FSANZ examined the actual hours for all completed applications to ascertain whether there was a need for adjustments to the range of hours for each level and is amending the present hours for the general procedure levels. After considering submissions received and a further review of the limited available data, FSANZ has determined that an additional level should be established to assist applicants by moving them closer to the thresholds, reducing the charge paid up-front and thereby reducing the likelihood of a large refund for unused hours.

Detailed reasons for the decisions above are outlined in Sections 6, 7 and 8 of this report.

FSANZ approved this report and its conclusions on XX December 2012. FSANZ will now proceed to have amendments to the FSANZ Regulations prepared to reflect these changes.

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Supporting document

The Consultation paper on the review of cost recovery arrangements and related submissions are available on the FSANZ website at

<http://www.foodstandards.gov.au/foodstandards/changingthecode/informationforapplicants/fsanzscostrecoveryar5707.cfm>

1. Purpose of the review

The accuracy of FSANZ's charging structure for processing certain applications to vary the Code, namely those that will confer an exclusive, capturable commercial benefit (ECCB) or where the applicant seeks to have the consideration of the application expedited, is critical to ensuring the charges are consistent with the Government cost recovery policy. In undertaking this review, FSANZ has completed an examination of the costs it incurs and the methodology underpinning the calculation of charges that are set in the FSANZ Regulations.

2. Background

FSANZ is an Australian Commonwealth statutory authority established under the FSANZ Act. Its functions are stipulated in the FSANZ Act and include developing food standards and variations to food standards included in the Code. Food standards are developed by FSANZ, either on application from an agency, body, or person, or by a proposal of its own initiative. Standards or variations to standards are approved by the FSANZ Board and its decisions are subject to consideration by a multi-jurisdictional ministerial council.

FSANZ is funded by an appropriation from the Australian Government, a 'fee for service' payment from the New Zealand Government, revenue generated from the supply of services (including the services that are the subject of cost recovery) and income from financial transactions. The contributions from the Australian and New Zealand Governments provide almost all FSANZ revenue.

The Code contains food standards which have been developed, approved and gazetted by FSANZ. The Code applies to all food sold or prepared for sale in Australia and New Zealand (except where specified 'Australia only'). Under state, territory and New Zealand food legislation, it is an offence to supply food that does not comply with the Code.

FSANZ prioritises its work on applications and proposals through its Food Standards Development Work Plan. The development of a Work Plan is required under section 20 of the FSANZ Act. FSANZ must review and update the Work Plan at least every three months. The Work Plan is published on FSANZ's website. The beginning of the formal assessment of applications which do not incur charges depends on the allocation of resources in FSANZ. The assessment of applications for which a charge is paid commences on payment of the charge.

In 1996, as part of the Government's review of Commonwealth agency funding, the then Australia New Zealand Food Authority (ANZFA), a predecessor of FSANZ, was asked to examine options for cost recovery. A consultant's report identified limited opportunities to recover costs, except in relation to the assessment of certain applications to change food standards. Following extensive consultation with stakeholders, a limited mechanism for full cost recovery in line with government policy, was developed. That policy, and the requirement for FSANZ to maintain a Work Plan, was enacted in the *Australia New Zealand Food Authority Amendment Act 1999*.

The 1999 amendments¹ authorised FSANZ to charge on a full cost recovery basis if an application conferred an exclusive, capturable benefit or if the applicant sought to commence consideration of an application earlier than would otherwise occur, based on the availability of resources.

¹ From the Australia New Zealand Food Authority Amendment Bill 1999 Explanatory Memorandum (circulated by authority of the then Parliamentary Secretary to the Minister for Health and Aged Care, Senator the Hon Grant Tambling)

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The amendments were designed to enable FSANZ to meet its statutory obligations by ensuring that its appropriated resources were spent on issues of highest priority to the community. The cost recovery arrangements commenced on 1 July 2000 and the level of cost recovery was reviewed in 2002 and in 2009–10.

The 2009-10 review of cost recovery resulted in an increase in the hourly rate set for cost recovery, from \$107 per hour to \$115 per hour. In addition, an administrative charge of \$10,000 was imposed to cover the costs of newspaper advertising and New Zealand gazette notices mandated by the FSANZ Act, and Federal Register of Legislative Instruments (FRLI) registration charges. Also, the number of cost recovery levels was expanded and the hours for various levels revised.

2.1 Australian Government cost recovery policy

The Productivity Commission (the Commission) undertook a review of cost recovery by Commonwealth government agencies in 2001. In that report (*Cost Recovery by Government Agencies*, 16 August 2001), the Commission found that well-designed cost recovery arrangements could promote economic efficiency and equity by instilling cost-consciousness among agencies and users.

The underlying principle of the cost recovery policy is that entities should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives. Cost recovery policy is administered by the Department of Finance and Deregulation and outlined in the *Australian Government Cost Recovery Guidelines July 2005*².

Used appropriately, cost recovery can provide an important means of improving the efficiency with which Australian Government products and services are produced and consumed. Charges for goods and services can give an important message to users or their customers about the cost of resources involved. It may also improve equity by ensuring that those who use Australian Government products and services bear the costs.

The policy applies to relevant *Commonwealth Authorities and Companies Act 1997* bodies such as FSANZ. In line with the policy, individual portfolio ministers are ultimately responsible for ensuring entities' implementation and compliance with the Cost Recovery Guidelines.

FSANZ has noted that the Department of Finance and Deregulation is undertaking a review of the Commonwealth Guidelines. That review is due to be completed during the current financial year. It is beyond the scope of the current FSANZ review to anticipate either the recommendations that might be made in the review or the Government's response.

3. FSANZ's legal basis to charge

FSANZ's power to recover costs is set out in section 146 of the FSANZ Act. That section provides that the regulations may fix charges for services provided by FSANZ.

The regulations may also provide for payment by instalments and fix the times at which instalments are paid. Subsection 146(2) specifies that a charge fixed under subsection 146(1) must not be such as to amount to taxation. Subsection 146(3) also specifies that this section does not apply to services or facilities that FSANZ provides under contract.

² http://www.finance.gov.au/publications/finance-circulars/2005/docs/Cost_Recovery_Guidelines.pdf

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Subsection 146(6) stipulates that a charge may only be fixed in relation to an application to develop or vary a food regulatory measure if:

- (a) the development or variation of the standard would confer an ECCB on the applicant;
or
- (b) the applicant has elected to have the consideration of the application expedited.

If section 146 does not apply to an application, consideration of the application by FSANZ will be at no cost to an applicant.

Under section 8 of the FSANZ Act, an ECCB is said to be conferred on an applicant if:

- (a) the applicant can be identified as a person or body that may derive a financial gain from the coming into effect 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.

An applicant for such an application is required to pay the full cost of processing their application.

Similarly, if an applicant not captured by an ECCB, elects to have consideration expedited, consideration of the application will commence on the date on which the relevant cost recovery charges are received by FSANZ.

Section 27 of the FSANZ Act stipulates when and how charges are payable following the acceptance of an application by FSANZ.

Regulations 7, 7A, 7B, 8 and 9 and Schedules 3 and 4 of the *Food Standards Australia New Zealand Regulations 1994* (the FSANZ Regulations) establish the rates of charging and the process for refunds.

3.1. FSANZ's cost recovery budget

In 2010–11 cost recovery revenue was \$453,000. In 2011–12, the amount recovered was \$416,157. In 2012–13, FSANZ estimates this figure will fall to approximately \$300,000 as there has been a consistent fall in the number of applications for which a charge might be paid. In addition, the waiting period before commencement of consideration of unpaid applications has fallen to a level that makes it uneconomical for most applicants to pay to expedite. There is currently little incentive to pay a charge to expedite the commencement of consideration of an application.

Standard 1.2.7 – Health, Nutrition and Related Claims will commence on XX January 2013. However, FSANZ has no firm knowledge of any applications relating to either general or high level health claims to be lodged in the 2012–13 financial year due to the extent of claims already included in the Standard or additional claims which are to be considered by FSANZ in proposals in the coming 12 months or so. General level health claim variation applications are considered under either the general or major procedures.

Approximately, 73% of applications accepted onto FSANZ's Work Plan since 2007 have been cost-recovered. Since 1 October 2007, 41 of 56 applications accepted onto the Work Plan incurred charges, either because FSANZ considered that the ECCB provision applied (27), or the applicant chose to expedite consideration of their application (14).

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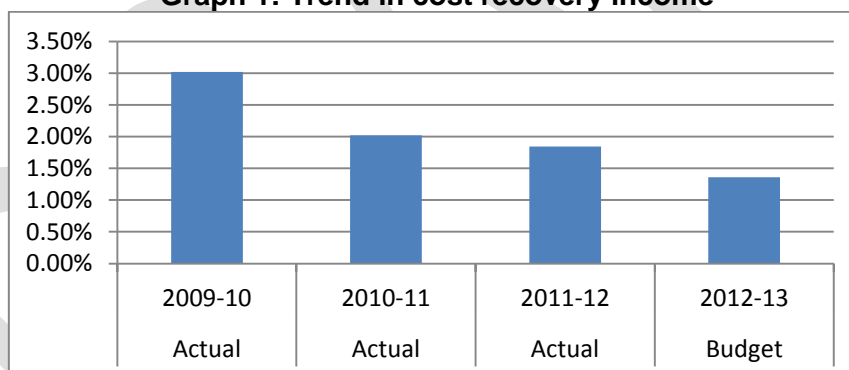
Almost 80% of the ECCB applications (21 out of 27) commenced since 2007 have involved genetic modification (commodities or processing aids), with the remainder overwhelmingly involving exclusivity of use of novel foods or additives. For those applications where the applicant chose to pay charges to expedite consideration, nearly all were for processing aids (GM and non-GM) or food additives. Appendix 1 lists all paid applications considered since 2007. Table 1 lists the number of paid applications received each year since cost recovery was implemented.

Table 1: Number of paid applications received since 2000

Financial year	Number of applications
2000–01	4 (1 withdrawn)
2001–02	5
2002–03	15 (1 withdrawn)
2003–04	12 (1 withdrawn)
2004–05	10 (1 withdrawn)
2005–06	8 (2 withdrawn)
2006–07	11 (1 withdrawn)
2007–08	7 (1 rejected)
2008–09	9 (1 withdrawn)
2009–10	14
2010–11	7 (1 withdrawn)
2011–12	6

Graph 1 illustrates the trend in cost recovery income as a percentage of total revenue in recent years. The figure for 2012–13 is only an estimated figure based on the 2012–13 budget. For previous financial years, the calculation is based on actual figures.

Graph 1: Trend in cost recovery income



4. The application assessment process

Assessment of an application involves a number of statutory steps, which are described in Part 3 of the FSANZ Act. FSANZ staff, both scientific and non-scientific, play varying roles in the application assessment process. FSANZ needs to ensure that sufficient scientific evidence is available, including from outside experts, to undertake a rigorous analysis of each application. Costs are also incurred meeting statutory notification and publication requirements.

Cost recovery is applied from the time an application is lodged with FSANZ to completion of all processes associated with gazettal and registration of the instrument and compilation on FRLI. If a review of the decision is requested by Ministers or a matter is taken to judicial review, this time is not included for cost recovery purposes. Also not included is any time taken to assist applicants before formal lodgement of their application.

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The basic steps in considering an application are:

- completion of the administrative assessment, where FSANZ determines whether to accept or reject an application
- completion of a risk assessment, which may involve a range of staff such as toxicologists, food technologists, dietary modellers, labelling, microbiologists and other scientific specialists as required
- an assessment of costs and benefits is required under the FSANZ Act in many instances and FSANZ may be required to prepare a regulation impact statement
- preparation of a draft food regulatory measure and report
- public consultation on the draft food regulatory measure
- processing and analysis of comments
- approval or rejection of the draft food regulatory measure
- liaison with and formal notifications to an applicant, notifications to the public and food regulation ministers
- notifications in newspapers, on the web and via email alert
- gazettal, registration of the Code amendments as legislative instruments and Code compilations and notification to the public.

Staff work on all types of applications (or proposals), regardless of their complexity and there is therefore no correlation between the complexity of an assessment and the expertise of staff involved in that assessment.

For applications relating to high level health claim variations, the following process applies:

- completion of the administrative assessment, where FSANZ determines whether to accept or reject an application
- notification to and consideration by the high level health claims expert committee and the Food Regulation Standing Committee (FRSC)
- completion of an assessment to determine the validity of the food-health relationship, which will involve staff from the scientific and labelling disciplines and other staff, as required
- processing and analysis of comments from the high level health claims expert committee and FRSC
- preparation of a draft food regulatory measure and report
- public consultation on the draft food regulatory measure if the applicant has elected that FSANZ give public notice calling for submissions.
- processing and analysis of comments if the applicant has elected to have public consultation
- approval or rejection of the draft food regulatory measure by the FSANZ Board
- liaison with and formal notifications to the applicant, notifications to the public and food regulation ministers
- notifications in newspapers, on the web and via email alert
- gazettal, registration of the Code amendments as legislative instruments and Code compilations and notification to the public.

5. Determining the hourly rate

5.1 Methodology

FSANZ is a small agency and only a relatively insignificant amount of work is cost-recovered. Cost-recovered work on applications is performed in the same way as non-cost-recovered application work and in substantially the same way as work on proposals. While there are minor

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differences in the procedure for managing proposal and application work, the FSANZ Act establishes procedures for considering applications and proposals that significantly mirror each other. This is particularly so in relation to the stages of consideration subject to charging i.e. the risk assessment and risk management phases.

In these circumstances, FSANZ has approached the task of estimating costs with the assumption that the consideration of applications and proposals are homogenous. FSANZ has not conducted a detailed assessment of the costs associated only with the consideration of paid applications. Some submitters have argued that FSANZ should not adopt this approach and should cost charged services separately. FSANZ does not accept that argument and considers that the costs associated with undertaking that work would be disproportionate to any benefit to be obtained. Nonetheless, FSANZ has, in response to the argument that some costs should not be included, re-examined its costings on the basis that the work of some sections should not be included in either the estimate of revenue generating staff or corporate overheads and on the basis that proposal work should not be included in the estimate. As anticipated, these alternative ways of considering the estimate process provide similar outcomes³.

Charging an across-the-board hourly charge for the assessing applications is the most efficient and cost-effective way of complying with our cost recovery arrangements. It is relatively easy to calculate, manage payments, track and calculate refunds. It would not be appropriate to set, for example, a fixed charge for the consideration of, say, applications to amend Standard 1.5.2 to approve the use of a genetically modified food because such applications are not all of the same complexity. There is an even greater disparity in the time that must be allocated to other types of applications, such as those for processing aids or food additives.

The review found that the basic costing methodologies used in previous estimates of costs were inadequate and did not capture the full cost of assessing an application. Continuing this situation is considered unacceptable.

The earlier reviews had assumed that the direct employment costs of an Executive Level 2 officer provided an appropriate basis for cost recovery. In hindsight, this approach is flawed in that it does not recover all costs associated with the employment of those staff, such as the cost of providing accommodation or the corporate costs associated with such employment. More importantly, the approach is inconsistent with the Commonwealth Guidelines, which support full cost recovery, unless decided otherwise by Government. The failure to address the issue of inconsistency with the Guidelines in 2009, or earlier, is not an argument for continuing that inconsistent approach in 2012.

The methodology used by FSANZ in this review is a simple attribution of the costs associated with the employment of revenue generating staff (RGS) who perform risk analysis work and the corporate costs associated with those revenue generating staff. The total sum is to be recovered at an hourly rate and an assumption is made that the revenue generating staff will be able to charge 5.5 hours per day for EL1 and lower levels and 5 hours per day for supervisory staff.

To calculate an hourly charge for use for cost recovery activities, the following components from 2011–12 have been included:

³ An analysis excluding the Scientific Strategy International and Surveillance, Food Safety and Behaviour and Regulatory Analysis sections resulted in an indicative hourly rate of \$186.37 based on current budget figures. The estimate including those sections was \$186.81 per hour. While these sections have some involvement in risk analysis, it is a less significant part of their work.

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- Salary costs – salaries of those employees directly engaged in performing standard development activities⁴ (RGS) and related on-costs (superannuation, leave entitlements and ComCare insurance premiums). RGS include staff with specific skills such as the toxicologists, nutritionists, microbiologists and so on, who play the key roles in assessments. FSANZ determined that 94 staff fell into the RGS category. Salary and on-costs for these 94 RGS employed by FSANZ were based on the current FSANZ Certified Enterprise Agreement and amounted to an \$11 million for 2011–12.
- Support and corporate costs – rent and information technology are costs that RGS can control the ‘consumption’ of, but not the unit price. The allocation of corporate costs such as rent and ICT cost (and including amortisation⁵ and depreciation costs related to capital assets) is based on relevant cost drivers, including staff numbers, workstations or floor-space. 52 non-RGS who deliver administrative support and governance oversight to the whole agency, including the RGS were included in these costs. Non-RGS staff include the Executive (5 members of the Australian Public Service Senior Executive Service) and Board (12 members who play a key decision-making role in the standard development process) and staff from such areas as human resources, operations and financial services. The lawyers, and administrative staff who assist in the standards development process, are also included in the corporate cost.

The review indicates that the hourly rate should be determined at approximately \$187. In addition, the review indicates that since 2000, FSANZ has been under-recovering the real cost of assessing an application and subsidising cost-recovered applications. The level of cross-subsidisation has averaged 48% of the actual cost between 2008–09 and 2011–12, and is estimated to reach approximately 57% of the forecasted cost in 2012–13 if there is no change to the charge rate. An indication of the level of under recovery in past years was provided in the 2009 review report, in which it was said that advice had been received from Walter and Turnbull in 2005, a firm of accountants, that the appropriate charge rate at that time should be \$125 per hour.

A number of submitters expressed concern that FSANZ had not provided sufficient detail of its income and expenditure to enable a full consideration of the proposed hourly rate. It is a matter of public record that the appropriation to FSANZ in 2012–13 is \$18.78 million. To this sum should be added estimates of earned interest (\$.522 m), sales (including fees recovered of \$0.821 m⁶) and the contribution of the New Zealand Government (\$1.446 m⁷).

The FSANZ internal budget for 2012–13 is at Appendix 2.

Graph 2 shows the real cost per hour for standards development over the last five years calculated using the new methodology developed from this review (and assuming that the increased charge will apply in 2013–14). The blue segments represent the percentage of the actual hourly cost to FSANZ covered by the cost recovery charge. The red segments indicate the balance of the actual cost that was subsidised by FSANZ.

⁴ For relevant activities see Section 5 of the FSANZ Act for further detail on statutory requirements for assessments

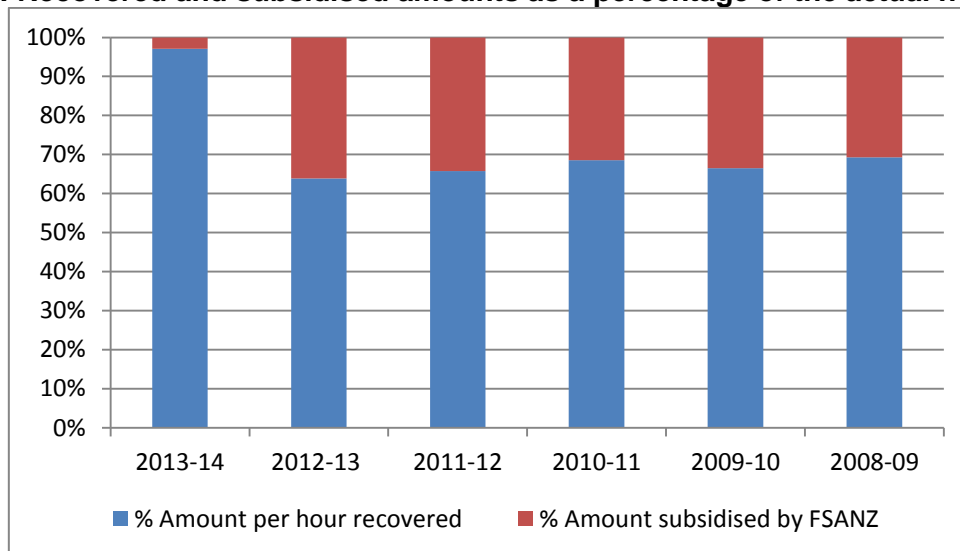
⁵ the process of decreasing, or accounting for, an amount over a period

⁶ This amount was revised after the Commonwealth Budget to be \$0.966 million

⁷ This contribution was revised after the Commonwealth Budget to be \$1.638 million

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Graph 2: Recovered and subsidised amounts as a percentage of the actual hourly cost



To accurately capture both direct and indirect costs (as recommended under the Cost Recovery Guidelines) incurred in standards development, FSANZ has applied a simplified activity-based costing (ABC) methodology in which there is only one activity, standards development. The methodology is consistent with the Guidelines and similar methodologies are used by other Australian Government agencies. FSANZ consulted with a number of other agencies with regulatory functions during the development of its methodology. It should be noted, however, that every agency is different in terms of the inputs used and how they are linked to activities used to produce outputs. There cannot be a 'one size fits all' and methodologies vary widely. In addition, allocated corporate costs and support costs (overhead costs) vary widely between agencies because they have different legislated structures.

As an example of the difference that exists in structure (and cost) in regulatory agencies that work in related areas, at the Australian Pesticides & Veterinary Medicines Authority (APVMA), the CEO is responsible for governance and management of the organisation. The APVMA CEO consults with an Advisory Board in undertaking this function. FSANZ is governed by a 12-member Board.

Cost recovery policies also vary, which complicates drawing comparisons with other agencies. For example, both FSANZ and the APVMA have a full cost recovery policy. FSANZ has adopted a simple hourly charge as the most efficient charging system for its work. In contrast, in relation to the APVMA's costs, these are supposed to be recovered at the rate of 40% from the applicant with the remaining 60% of the cost of the application being funded by a levy charged on agricultural and veterinary chemical sales.

However, the current rate of recovery from the applicant has fallen below 30%, with an increasing balance being recovered through the levy. It is noted that the Department of Agriculture, Fisheries and Forestry is currently undertaking a first principles review of that complex charging regime. The Australian Maritime Safety Authority (AMSA) has established two hourly charging rates, of \$170 and \$215, plus a system of set charges. Both AMSA and the APVMA also charge levies, which FSANZ does not. The Civil Aviation Safety Authority's (CASA's) fees are charged at (depending on the level of technical skill required) hourly rates of \$100, \$130, \$160 and \$190 per hour or as fixed fees starting from \$25 for minor discrete activities. CASA also has a ceiling for total cost recovery income. The highest hourly rate charged by CASA appears to have the closest correlation to the input cost of food risk analysis in FSANZ.

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Most of FSANZ's costs are for employee-related costs (salaries) which continue to increase as in other public and private sector organisations. On the other hand, FSANZ is, like almost all other Commonwealth agencies, subject to an efficiency dividend of 1.5% each year (4% in 2012–13). The efficiency dividend affects all FSANZ operations and operates primarily to deliver a dividend to government. However, an indirect effect is that the dividend delivers efficiency in pricing to those who purchase services that are cost recovered. In addition, purchasers receive the benefit of process efficiencies that are developed in the agency in terms of our service delivery. For example, there may be reductions in the time it takes FSANZ to complete assessments. We continue to look for better ways to track hours and plan projects through improved ICT systems. We have become more cost-effective in the ways we communicate between our offices in Canberra and Wellington. Our hourly costs do not necessarily reduce as a result of the dividend.

5.2 Charging structure

Once the total cost attributable to RGS is determined (\$20 million for 2011-12), that figure is then divided by the estimated number of hours that RGS spend directly on cost-recovered activities (billable hours)

Some submitters asked why billable hours on applications and proposals were not separated out when calculating an hourly rate. As stated in Section 6.1 above, FSANZ's response is as that work on applications and proposals is so similar, there is no reason to make that distinction. The similarity of the work can be seen in an examination of the list of proposals completed since 2007. Proposals, as with applications, involve a process of risk analysis that includes risk assessment and risk management. Most FSANZ staff will at any one time be working on a mix of applications (some charged and some not charged) and proposals.

While it might be possible to calculate a cost for paid application work alone, it is the judgment of FSANZ that the cost of work on risk analysis for the purposes of Part 3 of the FSANZ Act is an appropriate proxy for each type of work envisaged by that part of the Act and that it would be inefficient to undertake a more sophisticated analysis, given the relatively insignificant role of cost recovery in FSANZ operations.

However, FSANZ is developing a new ICT approach to tracking individual staff members' work on applications and proposals at any given time, which should be in operation in early 2013. Our current systems only tracks cumulative totals for project work. FSANZ's view at the moment is that the hourly charge is likely to be very similar, but this issue will be examined in more detail during the next review, using any relevant data. FSANZ calculates billable hours for standards development as follows:

- 5 hours per day⁸ 23 (EL2) RGS staff for 220 days (calendar year minus leave entitlements, public holidays); and
- 5.5 hours per day for 71 (EL1) RGS staff and below, for 220 days.

The billable hour calculation is less than 7.5 standard hours per day as it does not include time spent on the supervision of staff, professional development and other administrative functions. These are costs that have to be recovered by fee earners in the same manner that corporate costs must be attributed and recovered. There is a difference in the calculation of billable hours between Executive Level 2 and Executive Level 1 employees, because the latter spend more time directly on the cost-recovered activities, whereas the former have a greater supervisory role. For 2011–12, the total number of billable hours for the 94 RGS is estimated at 110,550 hours.

⁸ There are 7.5 hours in a standard day for FSANZ employees.

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5.2.1 Hourly rate

The data used in the consultation paper have been updated to reflect the 2012-13 Budget. Costs have increased since 2011-12 and staff numbers have reduced (although they fluctuate throughout the year). FSANZ has re-calculated the hourly charges based on new budget figures of approximately \$10.1 million for salary costs for 81 RGS and corporate and support costs (including for 47 non-RGS) of \$9.1 million (based on figures as at 30 June 2012). The hourly cost for 2012-13 has been calculated to be approximately \$187 per hour.

While this data suggests that the rate should be set at a figure that is higher than the \$180 indicated in the June 2012 consultation paper, FSANZ has determined that the rate of \$180 is reasonable and should be applied. In coming to this conclusion, FSANZ has had regard to submissions that have expressed concern about the magnitude of the increase proposed as a result of the review.

The new hourly rate of \$180 is expected to apply from 1 July 2013. The delay in implementing the revised rate is in part because there is a necessary delay while a new regulation is drafted and partly in response to submissions that indicate that industry requires some period of notice of the changed rate. The delay will give industry approximately 12 months to plan for the increase from the time FSANZ flagged its intention of increasing the rate.

FSANZ does not have any data on the hours that will be required for considering applications for high level health claim variations as the Standard has not yet commenced and there is no experience that would assist FSANZ to accurately assess cost levels or hourly costs. However, the types of revenue-generating staff involved in the assessments are expected to be similar to those involved with the assessment of other applications as the assessment work is broadly similar. The significant difference in the procedure is the use of an expert committee and the reduced level of public consultation. Each of these factors is likely to affect the number of hours required to complete an assessment, but it is not likely to have an impact on the underlying cost per hour of the labour inputs. In the absence of any data that will permit a more accurate assessment of costs, FSANZ is proposing to charge an hourly fee of \$180 arising from the cost recovery review outlined in the June consultation paper. This charge will apply from the date of registration on FRLI of the amendments to the FSANZ Regulations.

Charging an across-the-board hourly charge for assessing applications is the most efficient and cost-effective way of complying with our cost recovery arrangements. The methodology developed for the cost recovery review is consistent with the Guidelines.

FSANZ will review the hourly charge in two years when there should be data available to more accurately calculate the fees for this type of application using an appropriate methodology.

5.2.2 Refund policy

FSANZ refunds an amount calculated at the hourly rate for the time taken to assess an application that is less than the pro rata number of hours allowed for considering the application⁹. FSANZ tracks the hours used to complete the assessment in its Standards Management Database. When refunding charges for unused hours, any hours used by FSANZ to carry out a ministerial request for review of a decision relating to an application are not included in the total figure used to calculate the refund.

⁹ Regulation 8(b)

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No change to the refund policy is proposed.

5.2.3 Payment of instalments

For applications being considered under the minor procedure or level 1 or level 2 of the general procedure **or for those applications relating to high level health claim variations**, FSANZ must receive the full cost recovery charge. Work will not commence on the application until the full cost-recovery charge is paid.

To assist applicants with more complex applications where higher charges apply, charges may be paid in instalments. For applications being considered under current levels 3 or 4 of the general procedure, charges may either be paid in full or in two instalments. Work will not commence on the application until either:

- the full cost-recovery charge is paid OR
- a 1st instalment (75% of the full charge) is paid. Payment of the 2nd instalment of the remaining 25% of the full charge is then due by the date submissions for the round of public comment close. FSANZ will then not continue work on the application until after the 2nd instalment is paid.

With the change to the levels (see Section 7), FSANZ will now apply the instalments to levels 3, 4 and 5.

For applications being considered under the major procedure, charges may either be paid in full or in two instalments. Work will not commence on the application until either:

- the full cost-recovery charge is paid OR
- a 1st instalment (25% of the full charge) is paid. Payment of the 2nd instalment of the remaining 75% of the full charge is then due by the date submissions for the first round of public comment close. FSANZ will then not continue work on the application until after the 2nd instalment is paid.

No change to the current arrangements for the major procedure is proposed.

6. Cost recovery levels

FSANZ assesses applications under one of three procedures. Proposals are considered under a statutory framework that mirrors the application process in the use of general, minor or major procedures.

The minor procedure can only be used where the amendment does not alter the legal impact of a Standard e.g. the procedure can be used only to correct typographical errors or reference updates. The minor procedure is not relevant to applications for which a charge might be paid because the limited scope of the minor procedure is mutually exclusive of the conditions for paid applications.

The major procedure is used for applications that involve such scientific or technical complexity that it is necessary to adopt the procedure for an assessment or where there is a significant change to the scope of a food regulatory measure. Since 2007, only 8 completed applications have been dealt with under the major procedure.

Five of these were for genetically modified foods that involved consideration of new traits or novel proteins. However, three of the five applications were completed in a period of time that was within the range of the general procedure.

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One application involved consideration of the approval of Advantame as a food additive under the major procedure); the other two involved consideration of the addition of oligosaccharides to infant formula products.

The general procedure is the default procedure under which most applications are assessed. The essential difference between the general procedure and the major procedure is that the major procedure has one more statutory consultation step.

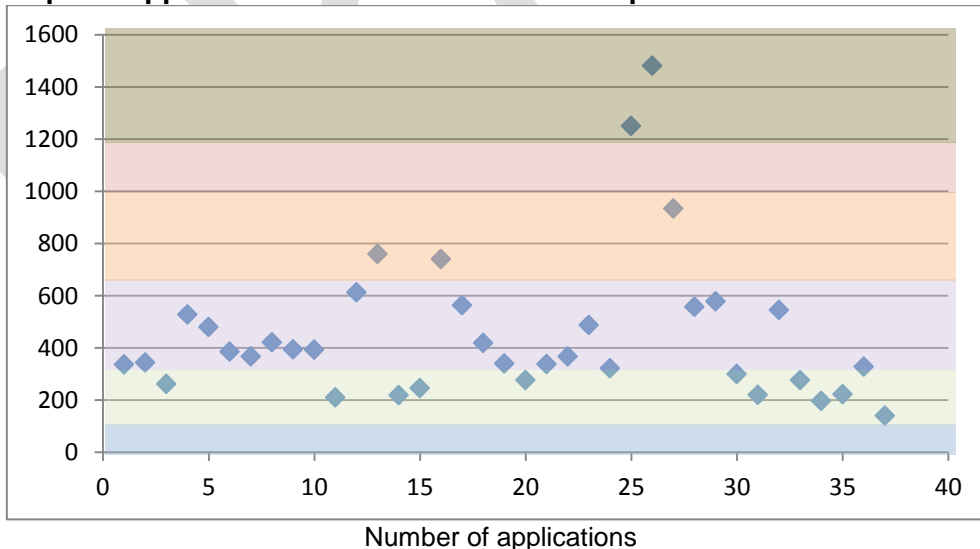
In recognition that applications being considered under the general procedure come with a range of complexities, and therefore a wide range of hours for assessment, there are currently four 'levels' in this procedure, three of which are based on an increasing maximum numbers of hours and the 4th level with a minimum, but no maximum hours.

Since 2007, when the process to consider applications and proposals was changed, FSANZ has completed consideration to the approval stage of 41 applications (cost-recovered and non-cost-recovered) assessed under the general procedure and 8 under the major procedure. This has provided far more evidence for consideration than was available at the time of the 2009 review.

FSANZ has examined the hours for these projects to ascertain whether there is a need for adjustments to the range of hours for each level and proposes that the present hours for the general procedure levels be amended. After considering submissions and a further review of the limited available data, FSANZ has determined that an additional level should be established. The new maximum hours for each level in the general procedure will be 350, 500, 650 and 800 hours. The 5th level of more than 800 hours is open-ended.

Graph 3 plots actual application hours against the current levels for the general procedure and where hours for the major procedure fell below the minimum hours for that procedure.

Graph 3: Applications with their actual hours placed in the current levels

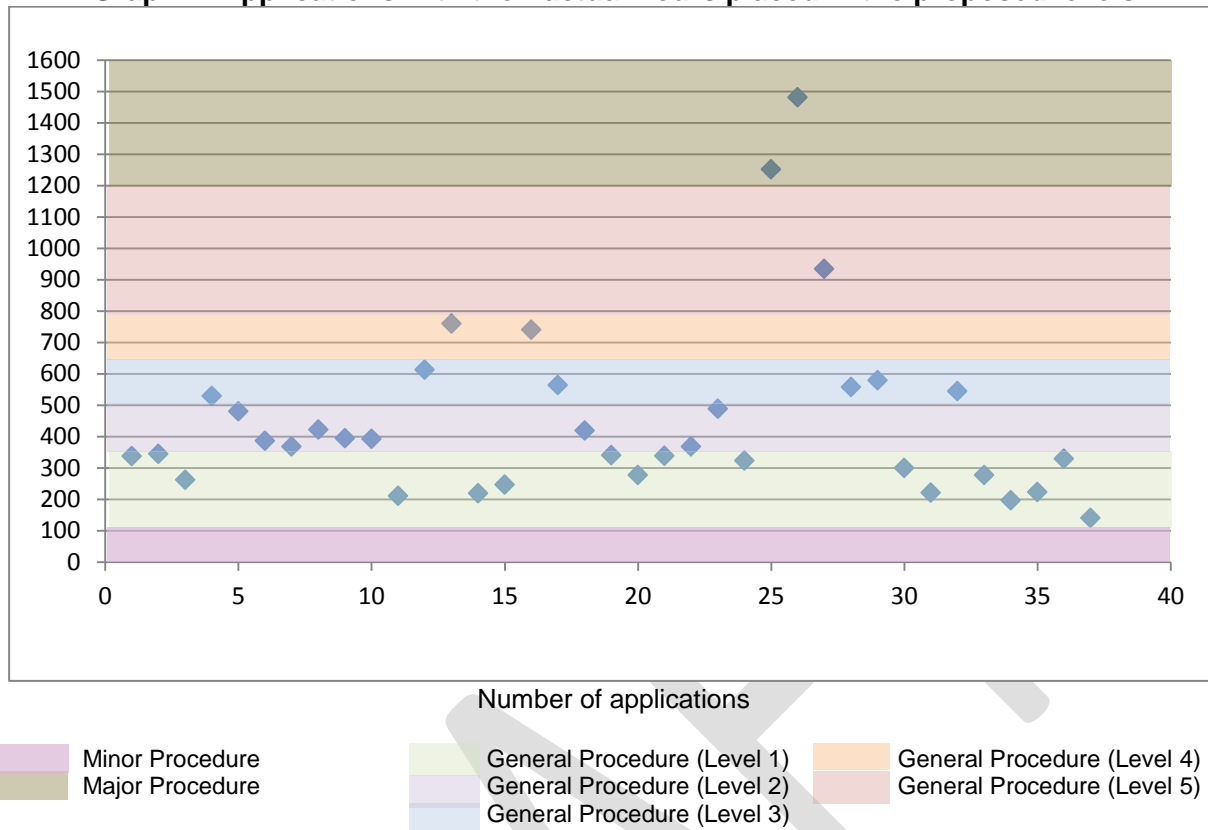


Minor Procedure
 General Procedure (Level 1)
 General Procedure (Level 3)
 General Procedure (Level 4)
 Major Procedure

Graph 4 plots those same applications against the adjusted levels as proposed below. These show that the proposed changes should assist applicants in levels 2 and 3 by moving them closer to the thresholds, reducing the charge paid up-front and thereby reducing the likelihood of a large refund for unused hours.

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Graph 4: Applications with their actual hours placed in the proposed levels



After further consideration of the above and concerns raised in submissions, FSANZ has modified the levels as proposed in the consultation paper. FSANZ has agreed to:

- make no change to the maximum number of hours allowed for the minor procedure
- adjust the number of hours for all levels for the general procedure:
 - maintain the maximum hours for level 1 at 350 hours
 - reduce the maximum hours for level 2 by 150 hours to 500 hours
 - add a new level 3 with a maximum of 650 hours
 - reduce the maximum hours for new level 4 by 200 hours to 800 hours
 - reduce the minimum hours for new level 5 by 200 hours to 800 hours
- make no change to the minimum number of hours for an application being assessed under the major procedure.

For the same reasons as the hourly charge, FSANZ is also proposing to mirror the cost recovery levels within the general procedure for applications for high level health claim variations and to review these levels in two years. It may then be that the number of hours required under the legislated high level health claim variation procedure may be less than for other applications, because there may not be the same level of public consultation, resulting in different maximum hours for each level.

FSANZ will now also proceed to amend the current examples in the FSANZ Regulations for each level for the general procedure (see Attachment B) to reflect the new levels.

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The following Tables show current indicative costs and costs as proposed with the increased hourly rate and the amended level thresholds for the general procedure and the levels for the high level health claims procedure.

Table 2A: Current charges

Procedure	Hours	Hourly charge (\$115)	Admin charge	Total charge \$AUD	Indicative Total charges \$NZ ¹
Minor Procedure	Maximum of 100 hours	11,500	10,000	21,500	27,950
General Procedure	Maximum of 350 hours	40,250	10,000	50,250	65,325
	Maximum of 650 hours	74,750	10,000	84,750	110,175
	Maximum of 1000 hours	115,000	10,000	125,000	156,250
	More than 1000 hours	115,000+ ²	10,000	125,000+ ²	162,500+
Major Procedure	1200 hours or more	138,000+ ²	10,000	148,000+ ²	192,400+

Table 2B: Proposed charges

Procedure	Hours	Charge (@ \$180 / hr)	Admin deposit	Total charge \$AUD	Indicative Total charges \$NZ ¹
Minor Procedure	Maximum of 100 hours	18,000	10,000	28,000	36,400
General Procedure	Maximum of 350 hours	63,000	10,000	73,000	94,900
	Maximum of 500 hours	90,000	10,000	100,000	130,000
	Maximum of 650 hours	117,000	10,000	127,000	165,100
	Maximum of 800 hours	144,000	10,000	154,000	200,200
	More than 800 hours	144,000+ ³	10,000	154,000+ ³	200,200+
Major Procedure	1200 hours or more	216,000+ ³	10,000	216,000+ ³	280,800+
High level health claims procedure	Maximum of 350 hours	63,000	14,000	77,000	100,100
	Maximum of 500 hours	90,000	14,000	104,000	135,200
	Maximum of 650 hours	117,000	14,000	131,000	170,300
	Maximum of 800 hours	144,000	14,000	158,000	200,200
	More than 800 hours	144,000+ ²	14,000	158,000+ ²	205,400+

¹ The figures are only indicative, calculated on an exchange rate of \$AUD1 = \$NZ1.3.

² If FSANZ determines under the FSANZ Regulations that the application consideration process is likely to require more than 1000 hours (general procedure) or 1200 hours (major procedure) a surcharge of \$AUD115 per hour will apply for each completed hour.

³ If FSANZ determines under the FSANZ Regulations that the application consideration process is likely to require more than 800 hours (general procedure) or 1200 hours (major procedure), a surcharge of \$AUD180 per hour will apply for each completed hour.

7. Administrative cost charge

In 2010, the FSANZ Regulations were amended to introduce a charge to cover the costs previously borne by FSANZ to comply with the statutory publication requirements. These costs are an integral part of the application assessment process and relate to:

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- newspaper notifications of approval [s 34(c) of the FSANZ Act]
- newspaper notifications of gazettal [s 92 of the FSANZ Act]
- gazettal in New Zealand [s 92 of the FSANZ Act] (as FSANZ publishes the Australian gazette notice, there are no publication costs involved for this gazettal)
- Federal Register of Legislative Instruments (FRLI) – registration of the legislative instrument [s 92 of the FSANZ Act] and related compilation/s as standards (and variations to) are considered to be legislative instruments, under the *Legislative Instruments Act 2003*).

As an organisation, FSANZ has committed significant resources to developing our information and communications technology. FSANZ recognises that taking advantage of the latest technology to improve our productivity is essential if we are to continue to contain cost increases and continue to improve the quality of the service we provide to our stakeholders. FSANZ uses technology wherever possible during the assessment process such as email, the internet and social networking sites.

However, the FSANZ Act mandates the requirement to advertise in newspapers for both approvals and gazettals and FSANZ has to pay charges to other government agencies. These come at a cost that FSANZ is unable to avoid. Under the Commonwealth Cost Recovery Guidelines, we are able to pass the costs on, unless decided otherwise by government. Amending the FSANZ Act to remove the newspaper advertising requirements is beyond the scope of this review, although FSANZ has reduced the size and text of the advertisements to a minimum to reduce costs, while still meeting statutory publication requirements. Several submitters indicated their support for removing this requirement from the FSANZ Act in an effort to utilise technology more efficiently and reduce overall costs. FSANZ will refer those submissions to the Department of Health and Ageing, which has policy responsibility for the FSANZ Act.

The deposit is based on a worst case scenario in terms of costs for one application. FSANZ always endeavours to achieve efficiencies through combining or grouping notifications. However, this is not always possible with our statutory timelines. It should be noted that the complexity of the assessment of an application has no bearing on the eventual costs in this area as costs are based on size of the advertisement (newspapers), numbers of pages (registration of instruments on FRLI), words (NZ Gazette) or Standards updated (registration of compilations on FRLI).

FSANZ has examined the appropriateness of the current charge and based on our experience of costs over the last three years, the \$10,000 administrative cost charge remains appropriate as a refund policy also applies for any unspent monies. FSANZ has agreed to:

- make no change to the flat charge of \$AUD10,000 to cover administrative costs
- make no change to the refund of any unused monies after all invoices have been paid¹⁰
- apply the flat charge to applications relating to high level health claim variations
- change the reference from a 'charge' to 'deposit' to more accurately reflect the fact that this is a 'fee for service' and any unused monies are refunded to an applicant.

This terminology change is only administrative and requires no amendment to the Regulations as it is not used.

The FSANZ Act requires FSANZ to form an expert committee under section 118 of the FSANZ Act to consider high level health claim variations and to provide comment to FSANZ. FSANZ cannot consider any application (or proposal) until that committee is formed. This will

¹⁰ Regulation 8(a)

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occur ahead of the date of effect of the Standard, if the Forum does not reject the Standard.

Eligible committee members will be entitled to remuneration for their work on applications as determined by the Australian Government Remuneration Tribunal¹¹ (section 119 of the FSANZ Act) e.g. currently Tier 3 costs of A\$606 per day per member. Members may also be entitled to part-day costs, as well as payment for travel and associated travel allowances. The decision on the level to be paid is ultimately made by the Parliamentary Secretary for Health and Ageing, on advice by FSANZ. These costs to FSANZ are eligible for cost recovery. FSANZ will ensure that the committee is managed as efficiently as possible to keep total costs at a reasonable level.

FSANZ is proposing to charge an additional deposit of A\$4000 to cover the costs associated with the payment of fees to external members of the expert committee who are entitled to be paid a fee. The fees are established by the Remuneration Tribunal. This amount will be charged in addition to the current administrative deposit of A\$10,000, which is charged to meet the cost of statutory publication obligations. Accordingly, the total deposit will be A\$14,000. Any unused monies will be refunded to the applicant once the assessment process is complete and all invoices paid, in accordance with established refund procedures that are set out in the regulations.

8. Consideration period

In relation to the consideration period for an application for a high level health claims variation, FSANZ is proposing to prescribe a maximum consultation period of 9 months in the FSANZ Regulations, to mirror the general procedure. This timeframe should be achievable given most applicants are likely to use the confidentiality provisions as an opportunity for first-to-market advantage, thus omitting the public consultation stage.

9. Consultation

Submissions were called for in a consultation paper on the review of cost recovery arrangements issued on 18 June 2012 for a four-week period that was subsequently increased to six weeks. FSANZ received 12 submissions from industry, government, a public health organisation and an individual. The submissions commented on all aspects of the review and a number of broader policy issues which were beyond the scope of the review and FSANZ's responsibilities.

Submissions on the proposed arrangements for high level health claim variations were called for on 8 November 2012 for four weeks. FSANZ received **XX submissions from**

FSANZ acknowledges the time taken by individuals and organisations to make submissions. Every submission has been reviewed by FSANZ and the issues raised by submitters are summarised in Attachment A (review) and Attachment B (health claims) with FSANZ's response to each issue. Where relevant, amendments have been made to the review outcome in this final paper as a result of comments, the relevant Section in this report has also been indicated.

While not all comments have been acted on, they are still valued and all have contributed to the rigour of this review.

¹¹ <http://www.remtribunal.gov.au/partTimeOffices/default.asp?menu=Sec4&switch=on>

10. Impact analysis

An impact analysis considers likely impacts based on available information and is designed to assist in the process of identifying the affected parties, any alternative options consistent with the objective of the proposed changes, and the potential impacts of any regulatory or non-regulatory provisions. Potential applicants to amend the Code (industry, industry organisations and government agencies) may be affected by the proposed changes arising from the review.

FSANZ recognises there will be a relatively substantial increase in the hourly charge paid by all applicants that will increase the overall cost of paid applications. However, the current hourly charge is significantly below the true cost of providing the service of assessing cost-recovered applications as calculated using the more accurate costing methodology developed during this review. FSANZ is therefore failing to comply with its policy authority for full cost recovery.

Against this, FSANZ notes that payment of a charge is discretionary for all applicants, unless the approval of the application would confer an ECCB on the applicant.

The proposed adjustment to the levels endeavours to address the current situation whereby the estimated hours for certain types of applications have been substantially less than the hours actually used. If FSANZ had not addressed this issue, some applicants could have been liable for much higher transaction costs than what would have been the case without the adjustments.

Appendix 2 presents data from current and former levels to the new levels to provide indicative costings in order to show the effect of the changes for a range of applications. Note that the calculations are only approximate and figures do not include actual or potential refunds.

Many submitters expressed their concern with the possible effect the increased hourly charge would have on innovation, research and development, food industry competitiveness and sustainability. Some submitters also claimed that the increase was inconsistent with government policy in relation to manufacturing. However, no data to indicate the extent of this possible effect was provided. The question whether cost recovery is appropriate for some FSANZ services is beyond the scope of the current review and is not a matter that is to be considered by FSANZ alone. Consistent with the approach taken in relation to the cost recovery of APVMA services, such a review should be conducted by a body that is responsible for food regulation policy.

Some submitters raised an issue about FSANZ's determination that an application will confer an exclusive capturable commercial benefit. FSANZ notes that, despite the submissions, no determination of ECCB has ever been formally challenged. This suggests that applicants understand that they are making an application that confers a benefit and that the charge is payable.

FSANZ does not accept that the definition in the FSANZ Act is subjective or uncertain. On the contrary, the definition is triggered by an objective assessment whether the applicant is a person or body that may derive a financial benefit and that other persons would require the applicant's agreement to benefit from the approval. FSANZ notes the argument that has been put forward that many applicants are not the prime beneficiary and, therefore, might not incur a charge. Noting that applicants are required to indicate whether or not an ECCB is applicable for their application, they should make such submissions in relation to their applications – providing appropriate evidence.

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FSANZ's approach is that an ECCB will be considered to be conferred if intellectual property rights are claimed by the applicant or a related entity in relation to the food that is sought to be approved.

10.1 Conclusion

FSANZ has determined that increasing the hourly charge to \$180 is appropriate. FSANZ considers that the increase more accurately reflects the actual costs in 2011–12 associated with considering applications. The increase is also in accordance with the Government's Cost Recovery Guideline requirements.

FSANZ notes that the proposed charge is consistent with comparable hourly costs charged by other agencies. While it is acknowledged that the increase is greater than the increase that would be achieved by applying an index such as the Consumer Price Index, it should be clear that the increase occurs because FSANZ is rectifying a long-standing under-recovery of costs that ought to be fully recovered.

The proposed amendments to the thresholds for the four cost recovery levels for the general procedure seek to better match the thresholds to the hours actually used for applications received since 2007, thus reducing the gap between the charge paid and the amount of refund for unused hours.

The Office of Best Practice Regulation has considered the impact analysis for these changes and has advised that a regulation impact statement is not required as the cost of standards development is machinery in nature and does not appear to change the regulatory burden placed on businesses or the non-profit sector (reference 13548).

The cost recovery area within the Department of Finance and Deregulation was consulted during the review.

11. Review

FSANZ will continue to seek efficiencies in its costs wherever possible. In order to limit the up-front costs to applicants, FSANZ will also continue to monitor the hours used to assess applications to ensure that estimates are as close as possible to the actual hours.

Attachments

- A. Summary of issues raised by submitters and FSANZ response – review of arrangements
- B. Summary of issues raised by submitters and FSANZ response – arrangements for health claims
- C. New cost recovery levels for the general procedure

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Appendix 1 – Paid applications considered since 2007

	TITLE	APPLICANT	ECCB / EXPEDITE
GM			
A1001	Food derived from Insect-protected Corn Line MIR162	Syngenta	ECCB
A1006	Food derived from Herbicide-tolerant Soybean Line DP-356043-5	Pioneer Hi-Bred International Inc	ECCB
A1018	Food derived from High Oleic Oil Soybean Line DP-305423-1	Pioneer Hi-Bred International Inc	ECCB
A1021	Food derived from Herbicide-tolerant Maize Line DP-098140-6	Pioneer Hi-Bred International Inc	ECCB
A1028	Oil derived from Insect-resistant & Herbicide-tolerant Cotton Event T304-40	Bayer CropScience	ECCB
A1029	Food derived from Drought-tolerant Corn MON87460	Monsanto Australia Ltd	ECCB
A1035	Food derived from Insect-protected Soybean MON 87701	Monsanto Australia Ltd	ECCB
A1040	Food derived from Insect-resistant & Herbicide-tolerant Cotton Line GHB119	Bayer CropScience	ECCB
A1041	Food derived from SDA Soybean Line MON 87769	Monsanto Australia Ltd	ECCB
A1042	Food derived from herbicide-tolerant Corn Line DAS-40278-9	Dow AgroSciences Australia Ltd	ECCB
A1046	Food derived from Herbicide-tolerant Soybean Line DAS-68416-4	Dow AgroSciences Australia Ltd	ECCB
A1049	Food from Herbicide-tolerant, High Oleic Acid Soybean Line MON 87705	Monsanto Australia Ltd	ECCB
A1051	Food derived from Herbicide-tolerant Soybean Event FG72	Bayer CropScience	ECCB
A1060	Food derived from Insect-protected Corn Line 5307	Syngenta Seeds Pty Ltd	ECCB
A1063	Food derived from Herbicide-tolerant Soybean MON87708	Monsanto Australia Ltd	ECCB
A1064	Food derived from Herbicide-tolerant Soybean Event CV127	BASF Plant Science Company GmbH	ECCB
A1066	Food derived from Herbicide-tolerant Maize MON87427	Monsanto Australia Ltd	ECCB
A1071	Food derived from Glyphosate-tolerant Canola MON88302	Monsanto Australia Ltd	ECCB
A1073	Food derived from Herbicide-tolerant Soybean DAS-44406-6	Dow AgroSciences Australia Ltd	ECCB
19			
Novel Foods			
A1005	Exclusive Use of Tonalin® CLA as a Novel Food	Cognis GmbH	ECCB
A1012	Exclusive Use of Clarinol™ CLA as a Novel Food	Lipid Nutrition	ECCB
A1019	Exclusive Use of Phytosterol Esters in Lower Fat Cheese Products	Kraft Foods	ECCB
A1024	Equivalence of Plant Stanols, Sterols & their Fatty Acids Esters	Raisio Nutrition Ltd	Expedite
A1055	Short-chain Fructo-oligosaccharides	GTC Nutrition	Expedite

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	TITLE	APPLICANT	ECCB / EXPEDITE
A1059	Exclusive Use of Pectin-derived Oligosaccharides	Nutricia Australia Pty Ltd	ECCB
A1070	Packaging Size for Phytosterol-enriched Lower Fat Cheese	Kraft Foods	Expedite
<u>7</u>			
Processing aids / additives			
A1003	Asparaginase from <i>Aspergillus niger</i> as a Processing Aid (Enzyme)	DSM Food Specialities	Expedite
A1004	Phospholipase A ₂ as a Processing Aid (Enzyme) (GM)	DSM Food Specialities	ECCB
A1011	Cellulase from <i>Penicillium funiculosum</i> as a Processing Aid (Enzyme)	Danisco Australia Pty Ltd	Expedite
A1015	Ethyl Lauroyl Arginate as a Food Additive	Laboratorios Miret SA	ECCB
A1032	β-Galactosidase as a Processing Aid (Enzyme)	FrieslandCampina Domo BV	Expedite
A1033	Maltotetraohydrolase as a Processing Aid (Enzyme)	Danisco Australia Pty Ltd	Expedite
A1034	Advantame as a High Intensity Sweetener	Ajinomoto Co Inc	ECCB
A1036	Lipase derived from <i>Aspergillus niger</i> as a Processing Aid (Enzyme)	DSM Food Specialities	Expedite
A1044	Pullulanase from <i>Bacillus subtilis</i> as a Processing Aid (Enzyme)	Novozymes	Expedite
A1048	Co-extruded Polystyrene & PVPP as a Processing Aid	BASF Australia Pty Ltd	Expedite
A1050	Acyltransferase as a Processing Aid (Enzyme) (GM)	Danisco Australia Pty Ltd	ECCB
A1057	Endo-protease as a Processing Aid (Enzyme)	DSM Food Specialities	Expedite
A1061	Amylomaltase as a Processing Aid (Enzyme)	DSM Food Specialities	Expedite
A1062	Dimethyl Ether as a Processing Aid for Non-dairy Foods	Industrial Research Limited	Expedite
<u>14</u>			
Other			
A1074	Minimum Amounts of L-histidine in Infant Formula Products	Nestlé Australia Ltd & Nestlé New Zealand Ltd	Expedite
<u>1</u>			
41	TOTAL		27 (ECCB) 14 (Expedite)

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Appendix 2 – FSANZ’s internal budget 2012-13

Chief Scientist	\$	%
Scientific Strategy, International & Surveillance	1,187,400	5.39
Food Standards (Canberra)		
Behaviour and Regulatory Analysis	959,669	4.36
Food Safety Standards	1,213,849	5.51
Information and Communications Technology	1,194,974	5.42
Operations	2,523,304	11.45
Public Health and Nutrition Standards	740,835	3.36
Food Standards (Wellington)		
Finance	417,233	1.89
Labelling and Information Standards	1,070,692	4.86
Product Safety Standards	889,672	4.04
Legal and Regulatory Affairs		
Communication and Stakeholder Engagement	629,359	2.86
Office of Legal Counsel	549,868	2.50
Code Interpretation Service	990,000	4.49
Regulatory and Parliamentary Affairs	454,882	2.06
Strategy and Audit	201,453	0.99
Risk Assessment and Evaluation Branch		
Food Composition, Evaluation and Modelling	1,137,690	5.16
National Nutrition Survey	618,180	2.81
Innovation and Reform	171,123	0.78
Risk Assessment—Chemical Safety and Nutrition	1,332,433	6.06
Risk Assessment—Microbiology	663,611	3.01
Risk Assessment—Production Processes	503,084	2.28
Board	591,000	2.68
Executive	2,290,280	10.39
Organisational	1,629,660	7.40
Misc Reserve	59,368	0.27
Total	22,035,620	100%

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Appendix 3 – Comparison of charges based on completed applications (excluding Administrative deposit)

Application	Original level	Up-front total hourly charge paid (does not include any refunds)	New level based on estimated hours	New level based on actual hours	New total hourly charge for same application (taking account of actual hours) (does not include any refund)
A1001	Up to 500 hours	53,500	Max 500 hours	Max 350 hours	63,000
A1003	Up to 500 hours	53,500	Max 350 hours	Max 350 hours	63,000
A1004	Up to 500 hours	53,500	Max 350 hours	Max 350 hours	63,000
A1005	Up to 850 hours	90,950	800 hours +	800 hours +	144,000+
A1006	1050 hours +	112,350+	1200 hours +	1200 hours +	216,000+
A1011	Up to 500 hours	53,500	Max 350 hours	Max 350 hours	63,000
A1012	Up to 850 hours	90,950	Max 1000 hours	800 hours +	144,000+
A1015	Up to 850 hours	90,950	Max 800 hours	800 hours +	144,000+
A1018	Up to 500 hours	53,500	Max 500 hours	Max 800 hours	144,000
A1019	Up to 850 hours	90,950	800 hours +	800 hours +	144,000+
A1021	Up to 850 hours	90,950	Max 800 hours	Max 650 hours	117,000
A1024	Up to 850 hours	90,950	800 hours +	800 hours +	144,000+
A1028	Up to 850 hours	90,950	Max 800 hours	Max 500 hours	90,000
A1029	1050 hours +	112,350+	1200 hours +	Max 650 hours	117,000
A1032	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1033	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1034	1050 hours +	112,350+	1200 hours +	1200 hours +	216,000+
A1035	Up to 850 hours	90,950	Max 800 hours	Max 350 hours	63,000
A1036	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1040	Up to 850 hours	90,950	Max 800 hours	Max 350 hours	63,000
A1041	1050 hours +	130,410	1200 hours +	1200 hours +	216,000+
A1042	1050 hours +	112,350	800 hours +	Max 350 hours	63,000
A1044	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1046	1050 hours +	112,350	1200 hours +	Max 500 hours	90,000
A1048	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1049	Up to 850 hours	90,950	Max 650 hours	Max 500 hours	90,000
A1050	Up to 500 hours	53,500	Max 500 hours	Max 500 hours	90,000
A1051	Up to 850 hours	90,950	Max 800 hours	Max 350 hours	63,000
A1055	1200 hours +	138,000+	1200 hours +	1200 hours +*	216,000+
A1057	Max 650 hours	74,750	Max 350 hours	Max 350 hours	63,000
A1059	1200 hours +	204,165	1200 hours +	1200 hours +	216,000+
A1060	Max 1000 hours	115,000	800 hours +	Max 650 hours	117,000
A1061	Max 350 hours	40,250	Max 350 hours	Max 350 hours	63,000
A1062	Max 350 hours	40,250	Max 350 hours	Max 350 hours	63,000
A1063	Max 1000 hours	125,000	Max 800 hours	Max 350 hours	63,000
A1064	Max 350 hours	40,250	Max 650 hours	Max 350 hours	63,000
A1066	Max 650 hours	74,750	Max 650 hours	Max 350 hours	63,000
A1070	Max 350 hours	40,250	Max 350 hours	Max 350 hours*	63,000
A1071	Max 650 hours	74,750	Max 500 hours	Max 500 hours*	90,000

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Application	Original level	Up-front total hourly charge paid (does not include any refunds)	New level based on estimated hours	New level based on actual hours	New total hourly charge for same application (taking account of actual hours) (does not include any refund)
A1073	Max 650 hours	74,750	Max 500 hour	Max 500 hours*	90,000
A1074	Max 650 hours	74,750	Max 500 hour	Max 500 hours*	90,000

*These Applications are still in progress, so hour estimate is based on estimate at Admin Assessment

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Attachment A – Summary of issues raised by submitters and FSANZ response

Submitters:

Industry

Australian Food and Grocery Council (AFGC)
 Australian Industry Group – Confectionery Sector (AIG)
 Bayer CropScience (Bayer)
 CropLife
 Dairy Australia (DA)
 Infant Nutrition Council (INC)
 Kraft Foods Ltd
 NZ Food and Grocery Council (NZFGC)

Government

NZ Ministry for Primary Industries (Manatū Ahu Matua) (MPI)
 Vic Government (Departments of Health, Primary Industries, Treasury and Finance, Business and Innovation and Small Business Victoria) (Vic Govt)

Consumers / public health organisations

Elaine Attwood
 Complementary Healthcare Council of Australia (CHC)

Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>Data / justification / more analysis for the large increase in charges</p> <ol style="list-style-type: none"> 1. Larger increase than inflation 2. MPI – should use best practice overhead costs, rather than actual costs 3. More information on terminology used e.g. billable hours, RGS 4. Complexities of applications not considered 	<p>Kraft, INC, AIG, MPI, Vic Govt, NZFGC, CropLife, Bayer, AFGC</p>	<p>As FSANZ has decided to delay the implementation of the charge increase to 1 July 2013. FSANZ has also provided additional figures in this report taking into account the 2012-13 budget estimates.</p> <ol style="list-style-type: none"> 1. The increase is not related solely to inflation. It arises due to a more accurate assessment of the costs to be recovered. 2. Benchmarking is not practical or feasible as there is no appropriate industry-wide standard for FSANZ to use. Overheads are driven by a number of factors e.g. salary rates, rentals etc. Salary rates vary widely across agencies and departments. Other costs vary depending on location etc. 3. FSANZ has provided more information in several sections in the above report. 4. The complexity of applications is a factor in assessing the number of hours and the procedure that is appropriate. The hourly charge is not relevant to complexity.

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>5. Costs for proposals should not be included</p> <p>6. Corporate costs of \$9 million too high</p> <p>7. Should only be recovering direct costs (see cost recovery guidelines)</p> <p>8. Hour allocation – Comparisons with previous reviews and how charges are calculated</p> <p>9. Charges should be reduced in line with cost efficiencies / efficiency dividend</p> <p>10. Costs are one of the highest costs in the world</p> <p>11. Need to show how cost recovery can improve efficiency with which products and services are produced as per Guidelines.</p>		<p>5. FSANZ’s current systems are unable to separate out the costs of proposals at particular points in time – only cumulative totals are tracked. New ICT systems currently being developed will allow us this capacity (<i>see Section 6.2</i>).</p> <p>6. This figure is accurate – support costs include organisational costs such as accrued entitlements (e.g. leave) and depreciation (a large cost) that were not considered in the earlier assessments. FSANZ is required to include these costs in its assessment of cost recovery charges. Also, FSANZ’s support costs may be higher than other government agencies because the cost of the Board is a corporate cost.</p> <p>7. FSANZ is meeting the requirements of the cost recovery guidelines and including appropriate costs in its modelling for full cost recovery. Recovering indirect costs is also in line with NZ Government policy.</p> <p>8. The reasons for the adjustments to the hour allocations for the general procedure are outlined in Section 7. The amendments are being made to more closely match the maximum hours with estimated hours, thereby reducing the initial payment and the refund amounts. The original levels were determined based on ‘best guess’ rough figures based on corporate knowledge, rather than accurate tracking of hours.</p> <p>9. The application of the efficiency dividend is irrelevant to the calculation of cost recovery charges. The dividend would only impact on the hourly charges if total staff numbers were reduced substantially (<i>see Section 6.1</i>). FSANZ continues to seek efficiencies in all costs wherever possible, but noting that FSANZ has statutory assessment processes it must follow throughout the consideration of applications (<i>see Section 9.1</i>).</p> <p>10. Costs imposed in other places is a matter for the relevant governments.</p> <p>11. The issue was addressed when the Government determined that there were a limited range of activities i.e. ECCB and expedited, that were appropriate for cost recovery for FSANZ. The PC Review found that the development and introduction of the cost recovery arrangements in ANZFA in 2000 were well-developed and consistent with good cost recovery practices. We are not undertaking a first principles review.</p> <p>Improvements and efficiencies continue to be introduced to the assessment system and FSANZ’s work practices. Inefficiencies relating to the current levels have been addressed to change the number of levels, the range of hours within each level, and the general descriptions likely to apply to each level.</p>

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>12. Effectiveness of proposed changes – FSANZ does not offer any other options to address the shortcomings in budgeting which have recently been identified</p> <p>13. Cost recovery charges to acquire additional resources</p> <p>14. AFGC offer to assist with data on impact analysis</p> <p>15. Consultant costs should be disclosed.</p> <p>16. FSANZ needs to demonstrate initiatives to reduce the level of cost recovery charges (AFGC</p> <p>17. FSANZ should produce a CRIS / Further review of costs, rejection of OBPR view that a RIS not required</p>		<p>12. Increasing the hourly charge is to ensure we are meeting government policy in relation to our full cost recovery policy to stop the subsidisation of costs which should be borne by applicants. As stated in the paper above, this will free up staff resources for other work within FSANZ. It is not in response to any ‘shortcomings’ in the Budget but a response to government policy. In relation to the ‘shortcomings in budgeting mentioned in the AFGC submission, FSANZ made an operating loss in 2011-12, which was absorbed from its reserves. This is not sustainable long-term.</p> <p>13. FSANZ considers the appropriateness of acquiring resources for all applications and proposals. However, issues such as the cost of consultants (FSANZ carried out a brief survey of potential charges from appropriately qualified consultants ranging from \$180 p/h to \$330+ GST) or the process for employing non-ongoing staff or consultants need to be considered against the statutory timeframes and the additional costs to FSANZ.</p> <p>14. Noted.</p> <p>15. General consultant costs are disclosed in Annual Report. They are not separated out to indicate where the costs were spent, nor tracked against individual applications or proposals. Consultants have not been used in the assessment process in recent years (see <i>comment in response 13. above</i>).</p> <p>16. Information on FSANZ’s efforts to reduce costs is outlined in several sections of the report (see <i>Sections 6.1, 6.2 and 8</i>). Amending the number of levels to reduce the overall costs to applicants is outlined in the Report in Section 7.</p> <p>17. FSANZ’s consultation paper and this report have been written in the CRIS format after consultation with DoFD and we have undertaken a CRIS process in order to provide transparency and to obtain relevant input. Government policy requires a CRIS where total receipts from cost recovery are \$5 million or above. FSANZ’s income is substantially below this figure.</p>
<p>Why has the time taken to process applications increased?</p>	<p>Kraft</p>	<p>FSANZ has not increased the time taken to process applications. We are adjusting the maximum hours allowed for the cost recovery purposes to minimise the current situation where there are a number of large refunds because FSANZ had over-estimated the hours for the assessment in the absence of accurate data. As more applications are assessed, we have access to more accurate data in relation to the time taken for assessments. In many cases e.g. GM applications, we are generally becoming more efficient in our assessments</p>

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
<p>Increase will stifle innovation, R&D, competitiveness and sustainability</p> <p>1. Against Govt policy in relation to manufacturing, National Food Plan etc</p> <p>2. 2001 PC concerns about application of cost recovery methodologies</p> <p>3. Model effect</p>	<p>Kraft, AIG, Vic Govt, CropLife, AFGC</p>	<p>The total cost to the food industry as a whole in any financial year at the moment is well under \$500,000 and due to the low number of paid applications and more accurate estimates of hours, not likely to dramatically increase (see <i>Section 10</i>).</p> <p>1. The National Food Plan and the Government's response will not be finalised until 2013.</p> <p>2. The PC found that well-designed cost recovery arrangements could promote economic efficiency and equity by instilling cost-consciousness among agencies and users. The PC Review found that the development and introduction of the cost recovery arrangements in ANZFA in 2000 were well-developed and consistent with good cost recovery practices. There is no charge for an application, unless an ECCB applies or the applicant wishes to expedite. There is no history of small businesses applying to amend the Code.</p> <p>3. FSANZ cannot justify the resources for modelling the effect a figure of less than \$500,000 will have on a multi-billion dollar industry.</p>
<p>Increase in unpaid applications as a result of charge increase</p>	<p>Kraft</p>	<p>The meaning of this statement is unclear. With the general downwards trend in both unpaid and paid applications, there is currently a minimal waiting period for most unpaid applications and into the future. If paid applications were to reduce further and unpaid increase, it is unlikely to have any major effect on the current waiting periods as staff would instead work on unpaid applications or proposals.</p>
<p>Review of the FSANZ approval process</p>	<p>Kraft</p>	<p>The assessment process is set down in the FSANZ Act and any changes to this process are not a matter for FSANZ and therefore outside the scope of this review. The assessment process was last extensively reviewed and the FSANZ Act subsequently amended in 2006-07 by the Australian Parliament, after Ministerial consultation with industry and other stakeholders.</p>
<p>There should be no disadvantage to consumer organisations, not-for-profit NGOs and individuals</p>	<p>Elaine Attwood</p>	<p>There will be no disadvantage as applications are unpaid, unless an ECCB applies to the applicant or an applicant chooses to expedite consideration, as per the FSANZ Act. There is no history of NGOs being subject to charging.</p>
<p>Use of an Exec Summary to highlight key issues</p>	<p>MPI</p>	<p>Now included on the front page of this Report.</p>
<p>Support removal of newspaper advertising requirements</p>	<p>MPI, CropLife, Bayer</p>	<p>Changes to the FSANZ Act are a matter for the Australian Parliament and beyond the scope of this review (see <i>Section 8</i>).</p>

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
General support for Govt's cost recovery principles	MPI, INC, DA, CropLife, CHC, AFGC	Noted.
Paid applications are already out of the reach of small to medium-sized business	DA	There is no disadvantage as applications are unpaid, unless an ECCB applies to the applicant or an applicant chooses to expedite consideration. At the moment and into the foreseeable future, there is a minimal waiting time for most unpaid applications.
Effect of health claims standard and possible approach changes to novel food / nutritive substances – effect on number and type of applications	DA, AFGC	<p>These potential changes to the Code have no impact on the considerations of this review. ECCB will apply to relevant applications and applicants can make business decisions to expedite applications if they wish. The approach to health claims has not yet been finalised.</p> <p>In relation to a changed approach to novel food and nutritive substances, FSANZ is still developing a policy approach.</p>
Not acceptable to correct a long-term failure to fully cost recovery	NZFGC	FSANZ is obliged to meet Govt policy and since the failure to correctly calculate costs has now been acknowledged, it must be rectified in order to stop subsidisation.
DoHA should have been involved in cost methodologies	NZFGC	<p>FSANZ is an independent statutory agency. The modelling was done in-house with input from our Chief Financial Officer, after consultation and research on methodologies used by other regulatory agencies. The methodology and the report as a whole were considered by DoFD. DoHA will advise the Minister about Regulations.</p> <p>Under the Cost Recovery Guidelines, the CEO/Board have responsibility for certification of CRISs and Portfolio Ministers have overall responsibility for compliance of cost recovery arrangements within their portfolio with the Cost Recovery policy.</p> <p>It is very difficult to compare hourly costs across agencies and departments. Most importantly, salary costs vary widely across APS staffing levels. The total budgets for agencies and the proportions of revenue generating staff also vary widely. Cost recovery policies also vary (see <i>Section 6.1</i>).</p>
Cease review until the Australian Government's review of cost recovery policy is finalised.	CropLife	It is beyond the scope of the current FSANZ review to anticipate either the recommendations that might be made in the review of the Guidelines or the Government's response. The review is not due to report until 2013. FSANZ's review cannot assume what the review might recommend or what the Government response might be. FSANZ is not in a position to defer implementing the outcomes of its own review.

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
Full access to financial documents and ABC modelling – FSANZ refused access to CropLife	CropLife	FSANZ advised CropLife that it was not in a position to disclose all its accounts to the level of detail CropLife appeared to be seeking. CropLife was advised that the information provided in the Consultation Paper provided enough relevant data. Section 6 of the paper provided information on the costs included in the methodology. In addition, CropLife was referred to the Cost Recovery Guidelines for the policy behind cost recovery and the matters which can be included in cost recovery charges.
Consideration of alternative means of assessing applications to increase efficiency Work sharing Harmonising the Code with other countries Direct tendering for services Establishment of a pre-qualified panel of suppliers to provide assessment services	CropLife, Bayer	A change to the assessment procedures set down in the FSANZ Act with which FSANZ must comply is beyond the scope of this review and FSANZ’s powers. This is a matter for Ministers to consider as it involves policy issues and which were last considered after detailed discussions with industry in 2007, and the Australian Parliament to amend the FSANZ Act. FSANZ continues to consider efficiencies within the scope of the FSANZ Act.
Review of figures by a third party / Business Process Review by Govt on FSANZ’s operations	CropLife	FSANZ is already committed to conducting a series of business process reviews and work has already started with a review of the Admin Assessment stage. Further reviews of our processes will then follow – timeframes have not yet been determined. In addition, the review conclusions have been reviewed by DoFD.
Hours for each level be significantly reduced / reasons for changes clearly identified	CropLife, CHC	FSANZ was unsure of how the CHC calculated its estimate of working days for each level. EL1s and 2s do not consistently work 7.5 hours every day just on cost-recovered applications. Section 6.2 indicates the reasons for the difference between the hours allocated for the levels. In addition to their cost-recovered activities, staff have other duties such as attending meetings, work on other non-cost recovered work and so on. Sections 5 and 7 indicate what work must be done for each assessment (further detail is available in the FSANZ Act) and the reasons the level hours are being adjusted based on data collected since 2007. The refund policy remains unchanged, so that if there are any unused hours, the applicant receives a refund for those unused hours.
6 weeks was not adequate for consultation	CropLife	This length of time is consistent with FSANZ’s usual period of 6 weeks. FSANZ acknowledged that the initially proposed 4-week period was not long enough for some stakeholders and extended the period.
Concern with large refunds	CropLife	FSANZ shares this concern. We now have data on over 70 applications, which we did not have 5 years ago. The data has informed this review and resulted in amendments to the levels under the General Procedure. Staff are also using the data to more accurately estimate hours during the Admin Assessment stage.

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Issue	Raised by	FSANZ Response (including any amendments to drafting)
Concern with data protection	CropLife, Bayer	This issue is outside the scope of this review. Comments have been passed onto relevant staff for consideration.
ECCB Determination ECCB open to judgement as not clearly defined Overestimated or incorrectly applied	CropLife, Bayer, NZFGC, AFGC	The application of ECCB is outside the scope of this review. However, as a result of concerns made by submitters, FSANZ will review its processes in relation to ECCB and how it applies the definition within the FSANZ Act.
Low level trade incident if company chooses not to seek approval due to costs	CropLife, Bayer	This assertion is too speculative for FSANZ to comment on.
Delay introduction of charge increase.	NZFGC, AFGC	FSANZ considered phasing in the charge increase, but has decided that perpetuating the current subsidisation was not appropriate. However, FSANZ will delay the date of effect to 1 July 2013. This will give industry approximately 12 months to plan for the increase from the time FSANZ flagged its intention of increasing the rate in June 2012.
Impact on trade	AFGC	No detail provided of what concerns may be for FSANZ to consider. DFAT staff have advised that increasing the cost recovery charges for applications to develop standards would not be an issue under the Technical Barriers to Trade Agreement, nor would the proposed increase breach any other WTO requirements.
Admin Cost charge – consideration of sliding scale	AFGC	Costs charged to FSANZ are not based on complexity. They relate to the size of an advertisement or the number of pages or words or the number of Standards updated.

Attachment B – Summary of issues raised by submitters and FSANZ response

Submitters:

Industry

Issue	Raised by	FSANZ Response (including any amendments to drafting)

DRAFT

Attachment C – New cost recovery levels for the general procedure

1 General procedure

- 1.1 This procedure applies to applications that are not being considered under the minor procedure or the major procedure.

Note The general procedure is the default procedure for considering an application for the development of a food regulatory measure or a variation to a food regulatory measure.

General procedure level 1

- 1.2 A general procedure application is to be classified as a general procedure level 1 application if the application consideration process for the application is likely to take a maximum of 350 hours.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:

- (a) extending the use of a substance to a specific food; or
- (b) a new non-GM source organism for an enzyme; or
- (c) a minor change to a labelling requirement; or
- (d) a minor change to a compositional requirement for a food; or
- (e) reducing a maximum residue limit.

- 2 This kind of application is likely to:

- (a) involve a simplified assessment of the potential risk to public health and safety; or
- (b) have a limited, or no, social or economic impact; or
- (c) require a basic toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
- (d) require a basic assessment of risk management measures; or
- (e) involve the development of a basic communications strategy.

General procedure level 2

- 1.3 A general procedure application is to be classified as a general procedure level 2 application if the application consideration process for the application is likely to take more than 350 hours, to a maximum of 500 hours.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:

- (a) extending the use of a substance to a limited range of foods; or
- (b) a new source organism for an enzyme; or
- (c) a pre-market approval similar to a previous approval; or
- (d) changing a compositional requirement for a food; or
- (e) inserting or increasing a maximum residue limit.

- 2 This kind of application is likely to:

- (a) involve an assessment of the potential risk to public health and safety of less than average complexity; or
- (b) have a very low social or economic impact; or
- (c) require a toxicological, nutritional, food technology, dietary modelling or microbiological assessment of less than average complexity; or
- (d) require an assessment of risk management measures of less than average complexity; or
- (e) involve the development of a basic communications strategy.

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General procedure level 3

- 1.4 A general procedure application is to be classified as a general procedure level 3 application if the application consideration process for the application is likely to take more than 500 hours, to a maximum of 650 hours.

Examples

1 An application for the variation or development of a food regulatory measure involving:

- (a) changing a labelling requirement for a food; or
- (b) a pre-market approval; or
- (c) a new micro-organism; or
- (d) increasing a maximum permitted concentration for an environmental contaminant or heavy metal.

2 This kind of application is likely to:

- (a) involve an assessment of the potential risk to public health and safety of average complexity; or
- (b) have a limited social or economic impact; or
- (c) require a toxicological, nutritional, food technology, dietary modelling or microbiological assessment of average complexity; or
- (d) require an assessment of risk management measures of average complexity; or
- (e) involve the development of a communications strategy.

General procedure level 4

- 1.5 A general procedure application is to be classified as a general procedure level 4 application if the application consideration process for the application is likely to take more than 650 hours, to a maximum of 800 hours.

Examples

1 An application for the variation or development of a food regulatory measure involving:

- (a) extending the use of a substance to a small range of foods; or
- (b) adding a new substance to a food; or
- (c) changing a labelling requirement for a limited range of foods; or
- (d) a more complex pre-market approval; or
- (e) establishing a maximum permitted concentration for an environmental contaminant or heavy metal.

2 This kind of application is likely to:

- (a) involve an assessment of the potential risk to public health and safety of greater than average complexity; or
- (b) have a broad social or economic impact; or
- (c) require a multi-disciplinary risk assessment of greater than average complexity; or
- (d) require an assessment of risk management measures of greater than average complexity; or
- (e) involve the development of a communications strategy; or
- (f) require limited targeted consultation with key stakeholders or special interest groups; or
- (g) require the provision of advice to advisory groups, peak organisations or other stakeholders.

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General procedure level 5

- 1.6 A general procedure application is to be classified as a general procedure level 5 application if the application consideration process for the application is likely to take more than 800 hours.

Examples

1 An application for the variation or development of a food regulatory measure involving:

- (a) adding a new substance to a range of foods; or
- (b) changing a labelling requirement for a range of foods; or
- (c) changing the compositional requirements for a range of foods; or
- (d) a complex pre-market approval.

2 This kind of application is likely to:

- (a) involve an extensive and complex assessment of the potential risk to public health and safety; or
- (b) have a broad and significant social or economic impact; or
- (c) require an extensive and complex multi-disciplinary risk assessment; or
- (d) require an extensive and complex assessment of risk management measures; or
- (e) involve the development of an extensive and complex community communications strategy; or
- (f) require targeted consultation with key stakeholders or special interest groups; or
- (g) require the development and distribution of community education material; or
- (h) require the establishment of external working groups to discuss and interpret scientific evidence and social perceptions.