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[16-09]

REVIEW OF COST RECOVERY ARRANGEMENTS CONSULTATION PAPER

Executive Summary

Purpose

As required by the Commonwealth Government's 2005 *Cost Recovery Guidelines*¹ and good management practice, a review of fees applicable to those applications that have an exclusive capturable commercial benefit, or where applicants have opted to pay to expedite consideration, has been undertaken. This paper is seeking comments from stakeholders on proposed changes.

Major changes to the way in which FSANZ assessed applications and proposals were made in the 2007 amendments to the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). It was considered better to allow the 'New' procedures to 'bed down' and then make more substantial changes in due course, after a comprehensive review. So, to effect that approach, the 'temporary' amendments made to the Regulations in 2007 were made to translate across the costs from the 'Old' assessment arrangements to the 'New' assessment arrangements to minimise any increased costs to potential applicants at the time. The intention was to have a major review about 18 months to two years after the 'New' arrangements took effect.

The last review of our cost recovery arrangements occurred in 2002. FSANZ has been conscious that a seven-year gap between reviews is unusual and has potential for substantial cost increases. As a consequence, costs have been monitored carefully over this period. The majority of FSANZ's costs are for employee expenditure and, like other private and public sector organisations, we have been faced with significant cost increases in this area. Overall FSANZ has experienced a 26% increase in its employee expenses over this period. However, as required of all public service agencies, all pay increases have been fully offset by savings from elsewhere within the organisation. At the same time, we have been faced with increased administrative expenditure for all overhead expenses, such as electricity and rent. This has been a major challenge for us, although we continue to actively reduce expenditure wherever possible. As a result, between 2002-03 and 2009-10, FSANZ has been able to keep the overall increase in hourly costs to just 7.5%. This equates to an increase in costs of just over 1% per year since the last review.

In addition to containing our costs, over the same period significant improvements have been made to the applications processing system which have further helped to reduce the timeframe taken to assess most applications and the subsequent reduction in the number of hours taken to assess an application.

¹ http://www.finance.gov.au/publications/finance-circulars/2005/docs/Cost_Recovery_Guidelines.pdf

In examining the new framework for processing applications introduced in 2007, the review found that the two-tier structure for the General Procedure meant that a number of applications were eligible for large refunds. This was considered undesirable as applicants had to provide a larger application fee upfront. As a result, it is proposed to restructure the General Category to include four categories rather than the existing two.

Another issue relates to a proposed new charge to cover the growing statutory administrative costs, some of which did not exist in 2002. These costs relate to the newspaper notifications for Approval and Gazettal of amendments to the Code, which are not covered under the current arrangements. In addition, since the last review, the Federal Register of Legislative Instruments (FRLI) has been set up and the growing cost to FSANZ for registering Gazette Notices and compilations of the Code are also not taken into account in our current cost recovery arrangements. Under the Commonwealth Guidelines on Cost Recovery, these costs should be included in the fee structure.

Proposed Approach:

- 1. to increase the cost per hour used to calculate the fees to reflect FSANZ's current costs**
- 2. to adjust to the current cost categories and how fees are calculated**
- 3. to charge a flat fee to ensure that administrative costs relating to newspaper notifications, gazettal and the Federal register of Legislative Instruments were included in fee calculations**
- 4. to maintain the current fee refund policy and extend its application to the administrative costs fee**
- 5. to not recommend automatic increases to the cost recovery charges, but to seek further advice from stakeholders before making a final decision**

The overall impact of these proposed changes will, of necessity, involve a minor increase in costs to applicants – the first real increase in seven years. However, FSANZ has tried to mitigate this to some extent by changing the cost categories to allow FSANZ to charge less for those applications which are at the lower end of the scale in terms of the time taken to assess these applications. It has also kept the hourly rate to a minimum with only a 7% increase proposed.

Other changes proposed are also relatively minor and are aimed at ensuring consistency with the changes proposed above.

FSANZ is not proposing any change to its current arrangements in terms of refunds for unused hours. However, in terms of the new fee relating to newspaper notification, gazettal and FRLI registration, FSANZ proposes to add the capacity to refund any money not expended for those costs.

It is expected that the new fee structure take effect by mid-2010.

In addition, to reduce future situations which occur where there is a large gap between reviews, thus leading to a large 'catch-up' fee increase, FSANZ is also seeking the public's views on the possibility to build in a limited capacity for an automatic increase in fees.

Consultation

FSANZ is now calling for public comment on the proposed changes to the Regulations.

Invitation for Submissions

FSANZ invites public comment on this Consultation Paper to assist FSANZ in further considering the issues. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information, separate it from your submission and provide justification for treating it as confidential commercial material. Section 114 of the FSANZ Act requires FSANZ to treat in-confidence, trade secrets relating to food and any other information relating to food, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote 'Review of Cost Recovery Arrangements'. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the [Standards Development](#) tab and then through [Documents for Public Comment](#). Alternatively, you may email your submission directly to the Standards Management Officer at submissions@foodstandards.gov.au. There is no need to send a hard copy of your submission if you have submitted it by email or the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 4 November 2009

SUBMISSIONS RECEIVED AFTER THIS DEADLINE WILL NOT BE CONSIDERED

Submissions received after this date will only be considered if agreement for an extension has been given prior to this closing date. Agreement to an extension of time will only be given if extraordinary circumstances warrant an extension to the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions relating to making submissions or the application process can be directed to the Standards Management Officer at standards.management@foodstandards.gov.au.

If you are unable to submit your submission electronically, hard copy submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2222

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942

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INTRODUCTION

1. Structure of Review

FSANZ has based this review of its cost recovery arrangements on the Commonwealth Government's 2005 Cost Recovery Guidelines. 'Cost recovery' broadly encompasses fees and charges related to the provision of government goods and services (including regulation) to the private and other non-government sectors of the economy. Used appropriately, cost recovery provides an important means of improving FSANZ's efficiency.

These Guidelines set out a number of cost recovery principles which in summary are:

- Any charges should reflect the costs of providing the product or service and should generally be imposed on a fee-for-service basis or, where efficient, as a levy
- Costs that are not directly related or integral to the provision of products or services should not be recovered. Agencies that undertake regulatory activities should generally include administration costs when determining appropriate charges
- Cost recovery should not be applied where it is not cost-effective, or where it was inconsistent with policy objectives or it would unduly stifle industry innovation
- Agencies are to review all significant cost recovery arrangements periodically, but no less frequently than every five years.

Whilst reviewing its fees, FSANZ was mindful of the need to ensure that these principles were followed. The following key questions from the Guideline were followed:

- Should cost recovery charges be imposed using fees or levies?
- What are the legal requirements for the imposition of charges?
- Which costs should the charges include?
- How should charges be structured?
- How should costs be calculated and allocated

In addition to FSANZ staff, the Working Group charged with carrying out this review, also included officers from the Australian Government Department of Health & Ageing. The scope of the Review was to:

- review the cost per hour used to calculate the fees
- review the estimated time required to consider an application and recommend adjustments to the current cost categories and how fees are calculated
- ensure that administrative costs relating to newspaper notifications, gazettal and the Federal Register of Legislative Instruments were included in fee calculations
- review the current fee refund policy
- examine options for automatic increases
- consider other related issues as they arise. These issues could either be directly related to cost recovery, or may have nothing to do with cost recovery, but still require an amendment to the Regulations
- Prepare a report with recommendations on a revised cost structure for charging fees and the steps required to implement the changes.

This consultation paper is to ensure transparency and accountability and provide our stakeholders with an opportunity to comment on the proposed changes to the arrangements.

2. Cost Recovery in FSANZ

Since fees were introduced in July 2000 the assessment processes have been reviewed and significant improvements introduced on several occasions, most recently in 2007 in order to increase the effectiveness and efficiency of the food regulatory system.

The current fee structure was last reviewed and changed in 2002-03 and is, therefore, based on outdated cost structures and processes. The accuracy of FSANZ's fee structure is critical in ensuring that the full cost of processing applications is received as required by the Commonwealth Government's 2005 *Cost Recovery Guidelines*. FSANZ has been conscious that a seven-year gap between reviews is unusual and has potential for substantial cost increases and as a consequence costs have been monitored carefully over this period.

Review Findings

3. Hourly Rate

The key finding of the Review relates to the change in hourly costs which has not been changed in over seven years. The current hourly rate of \$107 was based on the cost of an Executive Officer Level 2 (EL2) which represented the average level of FSANZ staff involvement in 2002. This hourly cost included the salary, superannuation and administrative costs of employing an EL2.

The majority of FSANZ's costs are for employee expenditure and, like other private and public sector organisations, we have been faced with significant cost increases in this area. Overall, FSANZ has experienced a 26% increase in its employee expenses over this period. However, as required of all public service agencies, all pay increases have been fully offset by savings from elsewhere within the organisation. At the same time we have been faced with increased administrative expenditure for all our overhead expenses such as electricity and rent. This has been a major challenge for us, although we continue to actively reduce expenditure wherever possible. As a result between 2002-03 and 2009-10, FSANZ has been able to keep the overall increase in hourly costs to just 7.5 per cent. This equates to an increase in costs of just over one per cent per year since the last review, with the hourly cost increasing from \$107 to \$115 per hour, using sound accounting methodologies to establish the hourly cost.

FSANZ has made significant efforts to reduce its costs in order to restrain costs to applicants and welcomes comment from stakeholders on the proposed figure, particularly from past or potential applicants.

4. Time to Assess Applications

4.1 Fee Structure

Since the 2007 amendments to the FSANZ Act relating to assessment procedures took effect on 1 October 2007, FSANZ has been closely tracking the hours required to assess applications and proposals. The Review has closely examined the time required to complete the assessment of applications, particularly over the last couple of years, as staff have been tracking their time for each application and proposal.

With the benefit of tracking hours in recent years, the Review Working Group has been in a much stronger position than in the past to determine timeframes for applications.

In the General Category, the most noticeable impact has been the requirement to provide applicants with a refund of their fees as the total hours worked has been less than the original estimate. This was considered undesirable as applicants had to provide a large application fee upfront.

The Review found that the present categories across the three Assessment Procedures should be adjusted to take account of the number of hours taken to assess applications since the 2007 amendments took effect. There was also not enough flexibility for either applicants or FSANZ in the current Category arrangements. Although there was an overall underestimation of hours, based on the most recent figures, the Review Working Group also believes that there is a good case for reducing the hours for two categories as indicated below.

See Attachment 1 for the current fee structure.

The Review is therefore proposing to:

- reduce the hours allowed for the Minor Procedure
- reduce the number of hours for the lowest category of the General Procedure
- increase the number of categories within the General Procedure to give applicants and FSANZ more flexibility
- make subsequential adjustments to the estimated hours for each remaining category with the General Procedure
- allow for a new open-ended category within the General Procedure for those complex applications which do not fit under the Major Procedure's definition (this would most likely only be applied to perhaps 1 application each year based on current applications)
- increase the minimum number of hours for an application being assessed under the Major Procedure.

For the General Procedure, the Review found there needed to be more flexibility to cover the small number of applications which did not fall under the definition of a Major Procedure, but still required a complex assessment and intensive staff resources.

The Review identified the time spent on each step of the assessment processes as reflecting optimal, efficient operations. These figures represent a comprehensive and accurate identification of all the processes involved in assessing applications.

The proposed fees and related categories comply fully with the Commonwealth Government's 2005 *Cost Recovery Guidelines*.

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the proposed categories listed in Table 1.

Table 1: Proposed Fee Structure

Assessment Procedure	Category	Hours involved	Charge (\$AUD) (based on a charge of \$AUD115 per hour)
MINOR		\$115 per hour to a maximum of 100 hours	max 11,500
GENERAL	Level 1	up to 350 hours	40,250
	Level 2	up to 650 hours	74,750
	Level 3	up to 1000 hours	115,000
	Level 4	base charge and if FSANZ determines that the assessment of the application is likely to require more than 1000 hours, for each hour that the assessment will require after the first 1000 hours	115,000 + 115 X ?? hours
MAJOR		a minimum charge equating to 1200 hours with an additional charge of \$115 per hour for any hours over 1200 hours	min 138,000

4.2 Procedure Classifications

The FSANZ *Application Handbook* requires applicants to state the Assessment Procedure under which they believe their application should be assessed. Schedule 4 of the Regulations provides advice to potential applicants to assist them with meeting this requirement (See Attachment 2 for the current descriptions). It also assists staff in their deliberations during the Administrative Assessment of either an application or proposal.

It should be noted that these descriptions are not inclusive lists, and are to be used as an indicative guide only. They are not meant to cover all possible applications as it would be impossible to cover all eventualities with confidence.

As each application is unique, it can be expected that the assessment process will require different inputs to complete a detailed assessment as required by FSANZ's legislation. The real and perceived health and safety issues associated with each application will determine the complexity of the scientific risk assessment required, the thoroughness and breadth of the risk management analysis, the complexity of the communication strategy required and the level of legislative drafting involved.

In relation to the descriptions for the Minor and Major Procedures, only the number of hours will be amended. It is proposed to amend the descriptions for the cost categories of the General Procedure as follows:

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the proposed descriptions listed in Table 2.

Table 2: Proposed Descriptions

General procedure level 1

A general procedure application that is likely to require up to 350 hours to be fully assessed is to be classified as a general procedure level 1 application.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:
 - (a) extending permission for use of a food or a food additive; or
 - (b) approving a new source organism for an enzyme; or
 - (c) making a very minor change to a labelling requirement; or
 - (d) making a very minor change to a compositional requirement for a food; or
 - (e) reducing a maximum residue limit; or
 - (f) any other matter of similar complexity.
- 2 This kind of application is likely to:
 - (a) involve an assessment of the risk to public health and safety of less than average complexity; or
 - (b) have only a limited or no social or economic impact; or
 - (c) require a very simple toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
 - (d) require a very simple assessment of risk management requirements; or
 - (e) involve any other matter of similar complexity.

General procedure level 2

A general procedure application that is likely to require up to 650 hours to be fully assessed is to be classified as a general procedure level 2 application.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:
 - (a) allowing a food or food additive that is not currently permitted; or
 - (b) changing a compositional requirement for a food; or
 - (c) granting a permission involving a pre-market safety assessment similar to a previous assessment; or
 - (d) inserting or increasing a maximum residue limit; or
 - (e) regulating a new micro-organism; or
 - (f) any other matter of similar complexity.
- 2 This kind of application is likely to:
 - (a) involve an assessment of the risk to public health and safety of average complexity; or
 - (b) have a low social or economic impact; or
 - (c) require a simple toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
 - (d) require a simple assessment of risk management requirements; or
 - (e) involve the development of a simple community communications strategy to address public concern; or
 - (f) involve any other matter of similar complexity.

General procedure level 3

A general procedure application that is likely to require up to 1000 hours to be fully assessed is to be classified as a general procedure level 3 application.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:
 - (a) establishing or increasing a maximum permitted concentration for an environmental contaminant or heavy metal; or
 - (b) seeking permission to add a nutritive substance to a specific food; or
 - (c) granting a permission involving a pre-market safety assessment; or
 - (d) changing a labelling requirement for a food; or
 - (e) any other matter of similar complexity.
- 2 This kind of application is likely to:
 - (a) involve a more complex assessment of the risk to public health and safety; or
 - (b) have a broad social or economic impact; or
 - (c) require a complete toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
 - (d) involve the development of a more complex community communications strategy to address public concern; or
 - (e) require targeted consultation with key stakeholders, special interest groups; or
 - (f) require the provision of advice to advisory groups, peak organisations or other stakeholders; or
 - (g) require comprehensive consideration of risk management requirements; or
 - (h) involve any other matter of similar complexity.

General procedure level 4

A general procedure application that is likely to require more than 1000 hours to be fully assessed is to be classified as a general procedure level 4 application.

Examples

- 1 An application for the variation or development of a food regulatory measure involving:
 - (a) granting a permission involving a complex pre-market safety assessment; or
 - (b) changing a labelling requirement across a small range of foods; or
 - (c) seeking permission to add a nutritive substance in a small range of foods; or
 - (d) any other matter of similar complexity.
- 2 This kind of application is likely to:
 - (a) involve a more complex assessment of the risk to public health and safety; or
 - (b) have a broad social or economic impact; or
 - (c) require a complete toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
 - (d) involve the development of a more complex community communications strategy to address public concern; or
 - (e) require targeted consultation with key stakeholders or special interest groups; or
 - (f) require the development and distribution of community education material; or
 - (g) require comprehensive consideration of risk management requirements; or
 - (h) involve any other matter of similar complexity.

5. Other Administrative Costs

The current fees do not take into account the increasing costs currently borne by FSANZ due to statutory requirements as part of the assessment of an application. These costs relate to:

- News paper notifications of Approval [s.34(c) of the FSANZ Act]
- Newspaper notifications of Gazettal [s.87(5)(b)(iii) of the FSANZ Act]

- Gazettal in New Zealand [s.87(5)(b)(ii) 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.87(8) of the FSANZ Act] (this is the same document as the Gazette Notice, as standards (and variations to) are considered to be legislative instruments, under the *Legislative Instruments Act 2003*)
- FRLI – Registration of the Code Compilation

These costs continue to increase and FSANZ has not been able to recoup them as part of its cost recovery arrangements without amendment to the Regulations. There are also new costs associated with the Federal Register of Legislative Instruments requirements which have only come into existence since the last review in 2002.

FSANZ proposes to charge a flat fee of \$AUD10,000 to cover these administrative costs, but to also apply a refund policy (See *Section 6*) to this fee for any unused monies.

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the proposed approach to cover the statutory administrative costs listed in Table 2.

Table 3: Current Indicative Statutory Administrative Costs for one Application

Action	Country	\$AUD cost
News paper notification of Approval	Australia	2500
	New Zealand	1600
Newspaper notification of Gazettal	Australia	2500
	New Zealand	1600
Gazettal	New Zealand (NZ.5c per word – 1000 words)	500
FRLI – Registration of Legislative Instrument	Australia (\$99 + \$198 per page) – based on 3 pages)	700
FRLI – Registration of Code Compilation	Australia (based on amendment to 2 Standards)	200
TOTAL		9600

6. Refund Policy

FSANZ currently refunds fees to applicants for unused hours after the completion of the assessment of a paid application. No change is being proposed to this approach. FSANZ tracks the hours used to complete the assessment in its Standards Management Database. It should be noted that when refunding fees 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 counted in total figure used to calculate the refund.

However, in relation to the proposed additional administration charge to cover the notification costs etc, FSANZ is proposing, after all invoices have been paid, to refund the cost of any unused monies from this charge to the applicant.

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the proposed refund policy.

7. Automatic Increases

The issue of building in automatic increases into FSANZ's cost recovery arrangements has been considered as part of the Review. However, no decision to recommend that an approach on this issue has been made. Instead, comments are welcomed from stakeholders.

Building in an automatic increase, perhaps for a specific maximum number of years e.g. five years at a set rate, with a sunseting requirement to review the arrangement again before any further increases could be implemented, would be of benefit for FSANZ to cover the annual increases in costs relating to salaries, notifications etc and give certainty in terms of income. It would also give applicants certainty in relation to fee increases, and instead of having large increases impact on applicants at the completion of reviews every five years or so (as has happened this time), small annual incremental increases would be better for applicants when budgeting to cover application costs.

Alternatively, FSANZ could commit to reviewing the cost recovery arrangements two years from when these proposed changes take effect.

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the issue of including the capacity for automatic increases in cost recovery charges in the Regulations or a review in two years.

8. Proposed Timelines

As changes to the fee structure requires amendments to the FSANZ Regulations, approval from the Parliamentary Secretary for Health is required, followed by the preparation of drafting instructions for the Office of Legislative Drafting, and finally approval from the Executive Council. It is expected that the earliest date for these changes to be implemented will be in mid-2010.

9. Impact Analysis

The impact analysis represents likely impacts based on available information. The impact analysis 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.

Two options are identified in relation to the proposed amendments to the Regulations:

Option 1 – Not proceed with the amendments to the Regulations

Option 2 – Proceed with the amendments to the Regulations as proposed

9.1 Affected Parties

Parties affected by the amendments include:

- potential applicants from industry and consumers generally, who may be affected either positively or negatively; and
- FSANZ.

9.2 Benefit Cost Analysis

9.2.1 Option 1 – Not proceed with the amendments to the Regulations

9.2.1.1 Benefits

- For FSANZ, this option would not result in any discernable benefits
- for applicants, this option would mean that fees would not increase.

9.2.1.2 Costs

- The current hourly cost is substantially under the true cost to FSANZ and affects FSANZ's budget in terms of the real costs to assess paid applications
- failure to follow Commonwealth Guidelines on Cost Recovery
- applicants will not have a wider choice of cost category which may result in lower fees for those applications falling within the Minor and more simple applications falling under the General Procedure.

9.2.2 Option 2 – Proceed with amendments to the Regulations

9.2.2.1 Benefits

- The proposed restructure of the fees will provide more flexibility in allocating applications
- there are resulting potential cost reductions for a number of applicants with the extension of the General Procedure categories and adjustments to the hours allocated for more simple applications
- the costs that FSANZ has been bearing in relation to the current hourly rate and administrative costs will be more properly borne by the applicant and will improve FSANZ's bottom line, thus freeing up resources which can be used elsewhere, including to reduce the 'queue' on the FSANZ Standards Development Work Plan.

9.2.2.2 Costs

- For some applicants with more complex paid applications, there will be cost increases, noting that for some time, the estimated hours taken to assess and application, and therefore the fees charged, have been underestimated. The proposed additional impost is mitigated by the fact that FSANZ will continue to apply a refund for any unused hours.
- All applicants of paid applications will now pay a flat administrative charge on top of their hourly charge, noting that FSANZ is currently bearing these costs. This additional impost is mitigated by the fact that it is proposed to apply a refund for any unused monies.

9.3 Comparison of Options

FSANZ considers the impact of various regulatory (and non-regulatory) options on all sectors of the community. FSANZ believes there is no other option other than to proceed with the amendments.

FSANZ welcomes comment from stakeholders, particularly from past or potential applicants on the proposed Benefit Cost Analysis conclusions.

9. Conclusions

Proposed Approach:

1. to increase the cost per hour used to calculate the fees to reflect FSANZ's current costs
2. to adjust to the current cost categories and how fees are calculated
3. to charge a flat fee to ensure that administrative costs relating to newspaper notifications, gazettal and the Federal Register of Legislative Instruments were included in fee calculations
4. to maintain the current fee refund policy and extend its application to the administrative costs fee
5. to not recommend automatic increases to the cost recovery charges, but to seek further advice from stakeholders before making a final decision

The overall impact of these proposed changes will, of necessity, involve an increase in costs to some applicants and a reduction in costs to others. FSANZ has been able to make significant reductions to its costs over the past seven years and it will continue to do so wherever possible. In addition, FSANZ is also proposing to change the cost categories to allow FSANZ to charge less for those applications which are at the lower end of the scale in terms of the time taken to assess these applications. It has also kept the hourly rate to a minimum with only a 7% increase proposed.

Other changes proposed are relatively minor and are aimed at ensuring consistency with the changes proposed above.

FSANZ is not proposing any change to its current arrangements in terms of refunds for unused hours. However, in terms of the new fee relating to newspaper notification, gazettal and FRLI registration, FSANZ proposes to add the capacity to refund any money not expended for those costs.

It is expected that the new fee structure take effect by mid-2010.

In addition, to reduce future instances of large periods between reviews, thus leading to a 'catch-up' fee increase, FSANZ is also seeking the public's views on the possibility to build in a limited capacity for an automatic increase in fees.

10. Commencement

ATTACHMENTS

1. Current Fee Structure
2. Current Descriptions of Procedure Classifications

Current Fee Structure

7 Charges

(1) For subsection 146 (1) of the Act, a body or person must pay to the Authority the charges mentioned in Schedule 3 for services and facilities the Authority provides to the body or person.

(2) For subsection 146 (1A) of the Act, the charge for an application that has been classified as a major procedure under Schedule 4 is payable in the following 2 instalments:

(a) 25% — within 20 business days after the notice of acceptance is given under section 27 of the Act;

(b) 75% — as soon as practicable after the public notice given under section 44 of the Act and before the assessment of the submissions under section 45 of the Act.

(3) However, the Authority must repay to the body or person \$107 for each hour, if any, by which the time taken to assess the application is less than the hours mentioned in Schedule 4 for the category of application.

Schedule 3 Charges (regulation 7)

Item	Service or facility provided by the Authority	Provision of the Act	Charge (\$)
1	Assessing the application under section 29 of the Act and preparing a draft regulatory measure under section 30 of the Act for:	subparagraph 27 (c) (i)	
	(a) a minor procedure application		18 725
	(b) a general procedure level 1 application		53 500
	(c) a general procedure level 2 application		90 950
	(d) a major procedure application:		
	(i) base charge; and		112 350
	(ii) if the Authority determines, under regulation 9, that the full assessment of the application is likely to require more than 1 050 hours — for each hour that the assessment will require after the first 1 050 hours		107

Schedule 4 Procedure classification (regulations 7, 8 and 9)

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 that is likely to require up to 500 hours to fully assess is to be classified as a general procedure level 1 application.

Examples

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

- (a) allowing a processing aid that is currently not permitted; or
- (b) extending permission for use of a food or a food additive; or
- (c) making a minor change to a labelling requirement; or
- (d) making a minor change to a compositional requirement for a food; or
- (e) granting a permission involving a pre-market safety assessment similar to a previous assessment; or
- (f) reducing a maximum residue limit.

2 This kind of application is likely to:

- (a) involve an assessment of the risk to public health and safety of average complexity; or
- (b) have only a limited social or economic impact; or
- (c) require a simple toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
- (d) require a simple assessment of risk management requirements; or
- (e) involve any other matter of similar complexity.

General procedure level 2

- 1.3 A general procedure application that is likely to require up to 850 hours to fully assess is to be classified as a general procedure level 2 application.

Examples

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

- (a) allowing a food or food additive that is not currently permitted; or
- (b) changing a compositional requirement for a food; or
- (c) establishing or increasing a maximum permitted concentration for an environmental contaminant or heavy metal; or
- (d) changing permission to add a nutritive substance; or
- (e) changing a labelling requirement for a food; or
- (f) granting a permission involving a pre-market safety assessment similar to a previous assessment; or
- (g) regulating a new micro-organism.

2 This kind of application is likely to:

- (a) involve a more complex assessment of the risk to public health and safety; or
- (b) have a broader social or economic impact; or
- (c) require a complete toxicological, nutritional, food technology, dietary modelling or microbiological assessment; or
- (d) require targeted consultation with key stakeholders, special interest groups; or

- (e) require the provision of advice to advisory groups, peak organisations or other stakeholders; or
- (f) require comprehensive consideration of risk management requirements; or
- (g) insert and amend maximum residue limit; or
- (h) require the establishment of high level advisory groups to discuss and interpret scientific evidence and social perceptions; or
- (i) involve the development of a community communications strategy to address public concern; or
- (j) involve any other matter of similar complexity.

2 Minor procedure

- 2.1 This procedure applies to an application for a variation of a food regulatory measure that, if made, would not directly or indirectly:
- (a) impose, vary or remove an obligation on any person; or
 - (b) create, vary or remove a right of any person; or
 - (c) otherwise alter the legal effect of the measure.

Examples

A variation would fall within this procedure if its only effect would be:

- (a) correcting a typographical error; or
- (b) updating a reference to another document; or
- (c) amending a cross-reference within a food regulatory measure; or
- (d) omitting provisions of a food regulatory measure that has ceased to have effect; or
- (e) any other matter of similar complexity.

- 2.2 An application that has been classified as a minor procedure is likely to require up to 175 hours to fully assess.

3 Major procedure

- 3.1 This procedure applies to:
- (a) an application for the development of a new food regulatory measure; and
 - (b) an application for the variation of a food regulatory measure that:
 - (i) involves scientific or technical complexity that makes it necessary to adopt this procedure for its assessment; or
 - (ii) involves a significant change to the scope of the food regulatory measure that makes it necessary to adopt this procedure for its assessment.

Examples

- 1 An application for the development of, or a major variation to, a new food regulatory measure involving:
- (a) the development of a new Standard; or
 - (b) a change to a labelling requirement affecting a wide range of foods; or
 - (c) a change to a compositional requirement for a food affecting a wide range of foods; or
 - (d) a change to a nutritive substance permissions affecting a wide range of foods; or
 - (e) the granting a permission involving a pre-market safety assessment, with no similar previous assessments; or
 - (f) any other matter of similar complexity.
- 2 This kind of application is likely to:
- (a) require the use of community meetings including public hearings; or
 - (b) involve the development of a complete community communications strategy to address public concern; or
 - (c) require the development and distribution of community education material; or
 - (d) require representation at international forums; or
 - (e) require extensive consultation with government agencies, industry, health professionals and consumer groups; or
 - (f) require establishment of external working parties and advisory groups; or
 - (g) require a comprehensive assessment of risk management requirements; or
 - (h) involve any other matter of similar complexity.

Note A minimum of 2 rounds of public comment is likely to be required and consultation might also require the establishment of external working parties or advisory groups to assist with the assessment.

3.2 An application that has been classified as a major procedure application is likely to require more than 1 050 hours to assess fully.