Call for submissions – Consultation paper

Review of cost recovery arrangements for applications

FSANZ has reviewed its cost recovery arrangements for applications to amend the Australia New Zealand Food Standards Code and now calls for submissions on the outcomes of the review including the proposed increase in the hourly charge and the new methodology used to calculate that charge, as well as amendments to the maximum hours for each category within the General Procedure.

All submissions will be published on our website. We will not publish material that is provided in-confidence, although that information might be subject to release under freedom of information laws. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of commercial-in-confidence information is available on the FSANZ website at information for submitters.

Submissions should be made in writing, be marked clearly with the word ‘Submission’ and quote the correct project number and name. While FSANZ accepts submissions delivered in hard copy to our offices, it is more convenient to receive submissions electronically through the FSANZ website via the link on documents for public comment. You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted by email or through the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 16 July 2012

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

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Canberra BC ACT 2610
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1. Purpose of the review

The accuracy of FSANZ's cost recovery fee structure for processing applications is critical to ensuring that the fees charged are consistent with the Government 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?

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 that are included in the Australia New Zealand Food Standards Code (the Code). Food standards are developed by FSANZ, either by application from any agency, body, or person, or by a proposal of its own initiative. Standards or variations to standards are approved by the FSANZ Board and are subject to consideration by a multijurisdictional ministerial council.

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 through the creation of 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. Commencement of the formal assessment of applications which do not incur fees depends on the allocation of resources within FSANZ.

The majority of applicants whose applications are accepted onto the Work Plan for assessment are from companies who lodge their application directly with FSANZ or through a consultant. A very small number of applicants are from industry or consumer organisations, individuals or government bodies – generally these applications are not cost-recovered (i.e. do not incur fees).

The 2010 review of cost recovery resulted in an increase in the hourly rate set for cost recovery, from $107 per hour to $115 per hour. An administrative charge of $10,000 was also imposed to cover the costs of newspaper advertising required by the FSANZ Act (responsibility for the FSANZ Act lies with the Australian Government Department of Health and Ageing (DoHA)), gazette notices in New Zealand and Federal Register of Legislative Instruments registration charges. In addition, the number of cost recovery categories was extended and the related maximum hours amended.
2.1 Australian Government cost recovery policy

The Productivity Commission (PC) undertook a review of cost recovery by Commonwealth government agencies in 2001. In that report (Cost Recovery by Government Agencies 16 August 2001) the PC found that well-designed cost recovery arrangements could promote economic efficiency and equity by instilling cost-consciousness among agencies and users. To assist agencies with their cost recovery arrangements, the PC developed cost recovery policy guidelines which were adopted by the Government in December 2002 to improve the consistency, transparency and accountability of its cost recovery arrangements and promote the efficient allocation of resources.

The underlying principle of the 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.

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.

3. FSANZ’s cost recovery policy authority

In 1996, as part of the Government’s review of Commonwealth agency funding, the then Australia New Zealand Food Authority (ANZFA) was asked to examine options for cost recovery. A consultant’s report subsequently found that ANZFA had limited opportunities to recover its costs except in relation to the assessment of certain applications to change food standards. Following extensive consultation with stakeholders at that time, a limited mechanism (outlined below) for full cost recovery in line with government policy, was developed in association with the requirement for FSANZ to maintain a Work Plan and ANZFA’s legislation amended accordingly in 1999 via the Australia New Zealand Food Authority Amendment Act 1999.

In particular, the legislative amendments enabled FSANZ to charge for commencing an assessment of applications earlier than planned in its work program and for applications for which there was a capturable industry benefit on a full cost recovery basis. These amendments were designed to enable FSANZ to meet its statutory obligations by ensuring that its appropriated resources were spent on issues of greatest priority to the community.

The cost recovery arrangements commenced on 1 July 2000.

2 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, MP)
4. FSANZ’s legal basis to charge

FSANZ’s power to recover costs lies in section 146 of the FSANZ Act which gives the Governor-General the power to make regulations to fix charges for services determined 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.

Subsection 146(6) stipulates that FSANZ may only fix charges 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 exclusive capturable commercial benefit (ECCB) on the applicant; or
(b) the applicant has elected to have the consideration of the application expedited.

It is important to note that if section 146 does not apply to an application, consideration of the application by FSANZ is at no cost to the applicant. It should also be noted that if FSANZ fails to meet its statutory obligations, there is no capacity in the FSANZ Act or the Regulations to pay applicants a monetary penalty.

Under section 8 of the FSANZ Act, an ECCB is 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. For example, an application for approval of a novel food that requests an exclusive permission for that particular novel food is likely to be considered to confer an ECCB.

Where an applicant elects to have consideration expedited, payment of the relevant cost recovery charge will bring forward the commencement of consideration of the application to the date the fees are received by FSANZ. Applicants may be liable for one of these options, but not both, as the consideration commences when fees are received for ECCB applications, in effect expediting consideration.

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

Regulations 7, 7A, 7B, 8 and 9 and Schedule 3 of the Food Standards Australia New Zealand Regulations 1994 relate to FSANZ’s cost recovery arrangements.

4.1. FSANZ’s cost recovery budget

60% of applications accepted onto FSANZ’s Work Plan are cost-recovered. Since 1 October 2007, 11 out of a total of 48 accepted applications accepted did not incur fees. The remaining applications (37) were cost-recovered, either because FSANZ considered the ECCB provision applied (24), or the applicant chose to expedite consideration of their application (13).
Seventy per cent of the ECCB applications involved genetically modified commodities, with the remainder involving exclusivity of use of certain novel foods, processing aids or additives. For those applications where the applicant chose to pay charges to expedite consideration, nearly all were for processing aids.

For 2012-13, cost recovery is estimated to be about 1% of total budget. This is the same as for 2011-12, but remains significantly lower than previous years. The drop in the number of cost-recovered applications and the associated revenue can be possibly explained in part by the global financial crisis, subsequent recessions and related economic austerity measures in Europe and the USA, although this is hard to quantify as this issue is not raised with applicants. Of greater impact is the reduction in the waiting time for unpaid applications which has reduced in recent years and is currently almost non-existent – meaning that there is currently no commercial benefit to an applicant to pay to expedite an application.

Graph 1 illustrates the trend in cost recovery income as percentage of total of revenue in recent years. Graph 2 illustrates the proportion of all receipts as a proportion of total anticipated revenue for 2012-3.

4.2 The public good

The question of ‘public good’ is usually raised with FSANZ when discussing cost recovery. This issue was considered extensively when cost recovery was originally introduced in 2000.
With the support of major food industry bodies, full cost recovery was introduced for ECCB applications, as it was recognised that there was a direct financial benefit to the applicant rather than to the food industry as a whole.

At the same time, those industry bodies also supported the proposal that applicants should be allowed to make a commercial decision to have their application expedited if they considered that it was in their financial interests to do so. The competitive nature of the food industry means that a business will often opt to expedite an application, if they consider that it will give them an advantage over their competitors to establish their product in the marketplace.

This increase in the cost of an application will be factored in by business when deciding whether to opt to pay and as such in our view would not impede innovation and, therefore, such applications should not be treated as a ‘public good’. The ‘public good’ argument, was therefore settled at the outset when the decision was made to apply cost recovery, not only to ECCB matters, but also to the expedited application process.

In addition, FSANZ has a proposal mechanism for amendments to the Code which are of a public good nature e.g. our current Proposal to allow companion dogs in outdoor dining areas. FSANZ uses proposals to fix minor or technical amendments on a relatively regular basis, and FSANZ will continue to do so.

5. **Assessment process**

The assessment of an application involves a number of steps and FSANZ staff, both scientific and non-scientific, plays a role in the process. FSANZ needs to ensure that it has collected sufficient evidence, including from outside experts if necessary, to undertake a rigorous analysis of each application. Costs are also incurred meeting statutory notification and publication requirements. The following outlines some of these aspects:

- completion of the Administrative Assessment where FSANZ decides whether to accept or reject an application
- completion of an 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
- public consultation on the assessment outcome and draft food regulatory measure, processing and assessment of comments
- approval or otherwise 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.

6. **Determining the hourly rate**

6.1 **Methodology**

The review found that the costing methodologies used in 2010 and in previous years did not capture the full cost of assessing an application. This is against the intent of Government in the 1999 amendments to the FSANZ Act to introduce full cost recovery for relevant applications.
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.

Graph 3 shows the real cost per hour for standards development over the last five years extrapolated from the new methodology developed from this review (and assuming that the increased fee will apply in 2012-13). The red part of each bar represents the gap between the cost-recovered hourly charge (blue) and the actual cost to FSANZ.

To accurately capture both direct and indirect costs incurred in standards development FSANZ has applied an activity-based costing (ABC) methodology. The ABC methodology is consistent with the Guidelines and the practice of other Australian Government agencies that provide similar regulatory functions. The ABC methodology links inputs to activities used to produce outputs, allocating corporate and support costs (overhead costs), to the costs incurred directly in standards development activities. The majority of FSANZ’s costs are for employee related costs 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 have to be considered:

- **Salary costs** – salaries of employees directly engaged in performing standard development activities (Revenue Generating Staff or RGS) and related on-costs (superannuation, leave entitlements and ComCare insurance premiums). Salary and on-costs for 94 RGS currently employed by FSANZ are based on the current FSANZ Certified Enterprise Agreement and amount to an estimated $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 amortisation\(^3\) 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. Non-RGS staff include the Executive (6 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), human resources, operations and financial services.

\(^3\) the process of decreasing, or accounting for, an amount over a period
For 2011-12, support and corporate costs are estimated at $9 million.

6.2 Charging structure

Once the total cost attributable to FSANZ 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) in order to derive an average hourly rate for FSANZ’s costs to be charged for standards development work. The RGS only are used for this calculation, and not all staff, as only RGS hours can be used for cost recovery purposes.

FSANZ calculates billable hours for standards development as follows:

- 5 hours per day\(^4\) 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 hours are less than 7.5 standard hours per day as they are net of non-billable time spent on the supervision of staff, professional development and other administrative functions. 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 play a greater supervisory role. For 2011-12, the total number of billable hours for the 94 RGS is estimated at 110,550 hours.

During the next fee review, FSANZ will explore the appropriateness of including the cost of non-billable hours into the calculation of cost recovery charges, subject to them constituting integral, true and efficient costs of the standard development activities delivered on a cost recovery basis.

As part of its administrative assessment following the receipt of an application, FSANZ estimates the number of hours it will take to complete the assessment of an application. The hours are estimated by seeking advice from staff, as well as examining the resources used for similar applications.

For example, if FSANZ estimates the hours to be 700 hours, the current cost recovery charge will be for Level 3 and the amount charged will be for 1000 hours – the maximum number of hours for that Level (700 hours is more than the maximum for Level 2) (see Table 1A below). This allows FSANZ some leeway in its estimate of hours as FSANZ cannot charge for any more hours, if more time is required to assess the application than was originally estimated and must absorb the costs from its Budget appropriation.

On the other hand, FSANZ refunds fees (on a pro rata basis) if the actual hours for assessing an application are less than the estimated hours. The refunds are made in accordance with the FSANZ Regulation 8, and any hours used by FSANZ to carry out a ministerial request for a review of a decision relating to an application are not included in the total number of hours used to calculate the refund amount.

6.2.1 Hourly Rate

As a result of using a more comprehensive, and therefore more accurate, costing methodology with a wider range of inputs, an appropriate full cost recovery hourly rate based on the 2011-12 budget has been determined at $180, compared with the current hourly rate of $115 that has resulted in under-recovery and cross-subsidisation from Budget-funded activities.

\[^4\] There are 7.5 hours in a standard day for FSANZ employees.
Subject to necessary amendments to the Regulations, the new hourly rate of $180 is expected to apply from 1 January 2013.

6.2.2 Fee 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 application\(^5\). FSANZ tracks the hours used to complete the assessment in its Standards Management Database. 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 included in the total figure used to calculate the refund.

No change to the refund policy is proposed.

7. Cost recovery categories

FSANZ assesses applications under one of three procedures. The general procedure is the default procedure and under which most applications are assessed. The minor procedure is only used where the amendment does not affect a Standard e.g. typographical errors or reference updates. The major procedure is used for applications which 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 the food regulatory measure. In recognition that applications with a range of complexities, and therefore a wide range of hours for assessment, under the general procedure, there are four ‘categories’ within this procedure, three of which are based on an increasing maximum numbers of hours and the 4\(^{th}\) category with a minimum, but no maximum hours. The minor procedure has maximum number of hours and the major a minimum number, but no maximum. See Attachment A for all three procedures and categories, their hours and descriptions of typical matters which would fall under each, as listed in the FSANZ Regulations.

Since 2007, FSANZ has completed consideration to the approval stage of over 30 applications (cost-recovered and non-cost-recovered) assessed under the general procedure and 6 under the major procedure. No applications were assessed under the minor procedure.

FSANZ has examined the hours for these projects to ascertain whether there is a need for adjustments to the range of hours for each category and proposes that the present hours for the general procedure categories be amended. The adjustments more closely align the hours required to assess an application with the matters that fall within each category and remove the resulting cross-subsidisation required from the Budget funded activities.

Graph 4 plots applications against the current procedures and cost category levels for the General procedure. Graph 5 plots those same applications against the proposed adjusted General procedure levels 1 and 2. These show that the proposed changes should assist applicants in Categories 1, 2 and 3 by moving them closer to the thresholds, thus reducing the fee paid up-front and reducing the amount of any refund that is required to be paid.

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\(^5\) Regulation 8(b)
FSANZ is proposing to:

- make no change to the maximum number of hours allowed for the Minor Procedure
- adjust the number of hours for all categories for the General Procedure:
  - increase the maximum hours for Category 1 by 50 hours to 400 hours
  - reduce the maximum hours for Category 2 by 50 hours to 600 hours
  - reduce the maximum hours for Category 3 by 200 hours to 800 hours
  - reduce the minimum hours for Category 4 by 200 hours to 800 hours
make no change to the minimum number of hours for an application being assessed under the Major Procedure.

The following tables show current indicative costs and costs as proposed with the increased hourly rate and the amended cost category thresholds.

Table 1A: Current charges

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Hours</th>
<th>Hourly Charge ($115)</th>
<th>Admin Charge</th>
<th>Total Fees $AUD</th>
<th>Indicative Total Fees $NZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Procedure</td>
<td>Maximum of 100 hours</td>
<td>11,500</td>
<td>10,000</td>
<td>21,500</td>
<td>27,950</td>
</tr>
<tr>
<td>General Procedure</td>
<td>Maximum of 350 hours</td>
<td>40,250</td>
<td>10,000</td>
<td>50,250</td>
<td>65,325</td>
</tr>
<tr>
<td></td>
<td>Maximum of 650 hours</td>
<td>74,750</td>
<td>10,000</td>
<td>84,750</td>
<td>110,175</td>
</tr>
<tr>
<td></td>
<td>Maximum of 1000 hours</td>
<td>115,000</td>
<td>10,000</td>
<td>125,000</td>
<td>156,250</td>
</tr>
<tr>
<td></td>
<td>More than 1000 hours</td>
<td>115,000+2</td>
<td>10,000</td>
<td>125,000+2</td>
<td>162,500+2</td>
</tr>
<tr>
<td>Major Procedure</td>
<td>1200 hours or more</td>
<td>138,000+3</td>
<td>10,000</td>
<td>148,000+3</td>
<td>192,400+3</td>
</tr>
</tbody>
</table>

Table 1B: Proposed charges

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Hours</th>
<th>Hourly Charge ($180)</th>
<th>Admin Charge</th>
<th>Total Fees $AUD</th>
<th>Indicative Total Fees $NZ</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Procedure</td>
<td>Maximum of 100 hours</td>
<td>18,000</td>
<td>10,000</td>
<td>28,000</td>
<td>36,400</td>
</tr>
<tr>
<td>General Procedure</td>
<td>Maximum of 400 hours</td>
<td>72,000</td>
<td>10,000</td>
<td>82,000</td>
<td>106,600</td>
</tr>
<tr>
<td></td>
<td>Maximum of 600 hours</td>
<td>108,000</td>
<td>10,000</td>
<td>118,000</td>
<td>153,400</td>
</tr>
<tr>
<td></td>
<td>Maximum of 800 hours</td>
<td>144,000</td>
<td>10,000</td>
<td>154,000</td>
<td>200,200</td>
</tr>
<tr>
<td></td>
<td>More than 800 hours</td>
<td>144,000+3</td>
<td>10,000</td>
<td>154,000+3</td>
<td>200,200+3</td>
</tr>
<tr>
<td>Major Procedure</td>
<td>1200 hours or more</td>
<td>216,000+3</td>
<td>10,000</td>
<td>216,000+3</td>
<td>185,000+3</td>
</tr>
</tbody>
</table>

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.

FSANZ is not proposing to amend the current descriptions in the FSANZ Regulations for each category at Attachment A.

8. 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 notifications of Approval [s 34(c) of the FSANZ Act]
- newspaper notifications of Gazettal [s 92 of the FSANZ Act]
• gazetted 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 fees to other government agencies. These come at a cost that FSANZ cannot avoid and under the Commonwealth Cost Recovery Guidelines, we are required to pass those costs on to applicants. Amending the FSANZ Act to remove the newspaper advertising requirements is beyond the scope of this review.

FSANZ has examined the appropriateness of the current charge and based on 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 therefore proposes:

• no change to the flat charge of $AUD10,000 to cover these administrative costs. 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 of notifications, meaning that most. However, this is not always possible with our statutory timelines.
• no change to the refund of any unused monies after all invoices have been paid.6
• a change from the reference to 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.

9. 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 that there will be a substantial increase in the hourly charge for all applicants. However, the current hourly charge is substantially under the true cost of providing the service assessing cost-recovered applications. FSANZ is therefore failing to follow its policy authority for full cost recovery. Compliance with the Cost Recovery Guidelines in relation to full cost recovery will ensure that services provided by FSANZ which should be charged for, are not cross-subsidised from appropriated funds, thus freeing up resources which can be used elsewhere, including to reduce any ‘queue’ on the FSANZ Standards Development Work Plan.

6 Regulation 8(a)
The proposed adjustment to the categories endeavours to address the current situation where the estimated hours for certain types of applications are substantially less than the eventual hours used. If FSANZ had not addressed this issue, applicants could have been liable for much higher costs than what would have been the case without the adjustments. This will also mean that there is capacity for more accuracy for FSANZ in the allocation of applications and the maximum upfront cost for applicants will be more closely aligned with the actual hours to be used for the assessment, thus minimising the difference between estimated and actual hours for the majority of applicants.

For most, if not all, applicants whose applications confer an ECCB or who, for commercial reasons, choose to expedite consideration of their application, there will be overall cost increases due to the hourly charge increase.

9.1 Conclusion

FSANZ has considered the impact of the proposed changes and has determined that there is no option other than to proceed with them. The increase in the hourly charge to $180 is justified as it more accurately reflects the true cost to FSANZ for considering applications. The increase is also in line with the Government’s cost recovery guideline requirements and is consistent with hourly costs charged by other similar agencies.

The proposed amendments to the thresholds for the cost categories under the General Procedure seek to mitigate the increase by matching the thresholds to the hours actually used for applications received since 2007, thus reducing the gap between the fee paid and the amount of refund for unused hours.

FSANZ will continue to seek efficiencies in its costs wherever possible.

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).

Attachment

A. Current cost recovery categories (Schedule 4 of FSANZ Regulations)
Attachment A – Current cost recovery categories (Schedule 4 of FSANZ Regulations – Procedure classification)

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 food or food additive that is permitted under a standard; or
   (b) a new 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 an assessment of the risk to public health and safety of less than average complexity; or
   (b) have a limited, or no, 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 community communications strategy to address public concern.

Note Section 1.1 provides that the general procedure applies to applications that are not being considered under the minor procedure.

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 650 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 pre-market approval similar to a previous approval; or
   (c) a new micro-organism; 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 risk to public health and safety of average complexity; or
(b) have a low 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 community communications strategy to address public concern.

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 650 hours, to a maximum of 1 000 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 range of foods; or
(b) changing a labelling requirement for a food; or
(c) a pre-market approval; or
(d) establishing or 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 risk to public health and safety of greater than average complexity; or
(b) have a broad social or economic impact; or
(c) require a toxicological, nutritional, food technology, dietary modelling or microbiological 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 complex community communications strategy to address public concern; or
(f) require targeted consultation with key stakeholders or special interest groups; or
(g) require the provision of advice to advisory groups, peak organisations or other stakeholders.

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 1 000 hours.

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

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

2 This kind of application is likely to:

(a) involve an extensive and complex assessment of the risk to public health and safety; or
(b) have a broad and significant social or economic impact; or
(c) require an extensive and complex toxicological, nutritional, food technology, dietary modelling or microbiological 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 to address public concern; 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.

Note Section 1.1 provides that the general procedure applies to applications that are not being
considered under the major procedure.

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 have ceased to have effect.

2.2 The application consideration process for an application that is classified as a minor procedure
application is likely to take a maximum of 100 hours.

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 the application consideration process for the application; or
      (ii) involves a significant change to the scope of the food regulatory measure that
          makes it necessary to adopt this procedure for the application consideration
          process for the application.

Examples
1 An application for the development of a new food regulatory measure, or a major variation to
a food regulatory measure, involving:
   (a) developing a new standard; or
   (b) changing a labelling requirement affecting a wide range of foods; or
   (c) changing a compositional requirement for a wide range of foods; or
   (d) adding a new substance affecting a wide range of foods; or
   (e) a pre-market approval, with no similar previous approvals.

2 This kind of application is likely to:
   (a) involve a very extensive and complex assessment of the risk to public health and safety; or
   (b) have a very broad and significant social or economic impact; or
   (c) require a very extensive and complex toxicological, nutritional, food technology, dietary
      modelling or microbiological assessment; or
   (d) require a very extensive and complex assessment of risk management measures; or
   (e) involve the development of a very extensive and complex community communications
      strategy to address public concern; or
require targeted consultation with key stakeholders or special interest groups; or
(g) require the development and distribution of community education material; or
(h) require extensive consultation with government agencies, industry, health professionals and consumer groups; or
(i) require the establishment of high-level advisory groups to discuss and interpret scientific evidence and social perceptions; or
(j) require community meetings including public hearings.

3.2 The application consideration process for an application that is classified as a major procedure application is likely to take 1 200 hours or more.