

Governance Framework 2020

Contents

1.	Introduction	5
1.1	The FSANZ Governance Policy Statement	5
2.	The FSANZ legal and policy frameworks	5
2.1	Public Governance, Performance and Accountability Act 2013	5
2.2	<i>Public Service Act 1999</i>	6
2.3	Food Standards Australia New Zealand Act 1991	6
2.3.1	Object of the FSANZ Act.....	6
2.3.2	Functions	6
2.3.3	Powers.....	7
2.3.4	Ministerial Direction.....	7
2.3.5	The Board.....	7
2.3.6	The Chief Executive Officer	7
2.3.7	FSANZ Staff	7
2.4	The Food Regulation Agreement	7
2.5	The Agreement between Australia and New Zealand Concerning a Joint Food Standards System	8
2.6	Australia and New Zealand Ministerial Forum on Food Regulation (the Forum).....	8
2.7	Ministerial policy statement on the food regulatory system.....	9
2.8	The Food Regulation Standing Committee (FRSC).....	9
3.	The FSANZ Governance Framework	9
3.1	Leadership, ethics and culture	9
3.2	Compliance.....	10
3.3	Collaboration.....	10
3.3.1	Minister and Parliamentary liaison	10
3.3.2	External stakeholder communication	10
3.3.3	Stakeholder groups.....	11
3.3.4	Internal stakeholder forums.....	11
3.4	Risk management.....	11
3.4.1	Risk assessment.....	11
3.4.2	Fraud control.....	12
3.4.3	Conflicts of Interests	12
3.5	Accountability and clear reporting	12
3.5.1	Internal Conformance – Board, the Finance Audit and Risk Management Committee (FARMC) and the People, Culture and Remuneration Committee (PCRC)	12
3.5.2	External Accountability.....	13
3.6	Planning & Performance Monitoring.....	13

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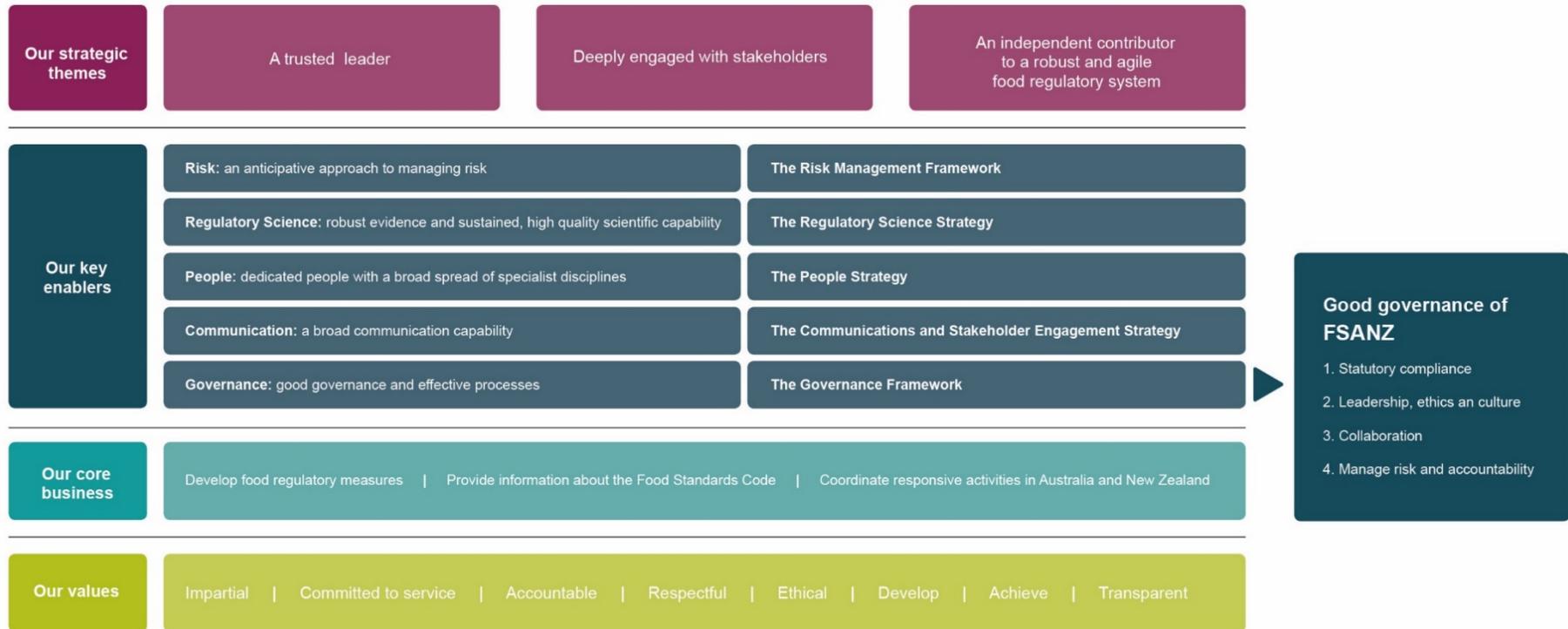
3.6.1	Planning.....	13
3.6.2	Performance Monitoring.....	13
3.6.3	Board performance	14
4	Review and evaluation of FSANZ Governance Framework.....	14
5	Dealing with governance breaches and complaints.....	14

This document provides information on the governance of Food Standards Australia New Zealand.

The Governance Framework is one of a suite of documents that supports the Corporate Plan.

This Framework supports the governance enabler of the Corporate Plan.

Reviewed March 2020.



1. Introduction

Our governance framework contributes to strong and sustainable performance and builds confidence in our capacity to respond to challenges.

The governance and financial management arrangements for FSANZ are determined by our legislative framework—the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act), the *Public Service Act 1999* (the PS Act) and the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) — and an agreement made under the *Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System*, which provides a basis for contractual arrangements with New Zealand for the delivery of specific services.

1.1 The FSANZ Governance Policy Statement

The Board and Executive are committed to good governance and effective work processes. Governance arrangements are designed to ensure that:

- decision-making is authorised and accountable; and
- FSANZ contributes effectively to food regulation design and implementation.

Good governance requires:

- the Board and senior management guiding and monitoring our work;
- management and staff disclosing all material matters in a timely and accurate manner; and
- policies to manage our relationships with stakeholders—including employees, Parliament and the public.

2. The FSANZ legal and policy frameworks

2.1 Public Governance, Performance and Accountability Act 2013

FSANZ is a Commonwealth corporate entity for the purposes of the PGPA Act. The CEO is a member of, and appointed by, the Board.

The Board is the accountable authority for FSANZ, and as such, must govern the entity in a way that promotes:

- the proper use and management of public resources;
- the achievement of the purposes of the entity, and
- the sustainability of the entity¹.

The Board has an agreed Charter which guides the Board's operations and governance of the agency.

As we have enabling legislation, subsection 35(3) of the PGPA Act does not apply to the FSANZ Corporate Plan.

¹ Public Governance, Performance and Accountability Act, section 15

2.2 Public Service Act 1999

The Public Service Act (the PS Act) provides for a public service which has a strong performance orientation and is ethical in its approach to governance and program and service delivery.

The responsibilities of the CEO include providing leadership, strategic direction and a focus on results.

The PS Act requires compliance by APS Employees with the APS Values and APS Employment Principles.

The APS Values articulate the parliament's expectations of public servants in terms of performance and standards of behaviour. The principles of good public administration are embodied in the APS Values. The APS Values require that we are: committed to service; ethical; respectful; accountable; and impartial.

The APS Employment Principles include the principle that decisions relating to engagement and promotion are based on merit. The APS recognises the diversity of the Australian community and fosters diversity in the workplace.

Australia based employees are engaged under section 22 of the Public Service Act and are APS employees.

New Zealand based employees are engaged as locally engaged employees under section 74 of the Public Service Act and are not APS employees. A distinction is that only APS Wemployees are subject to the APS Employment Principles or the code of conduct provisions of the Act.

2.3 Food Standards Australia New Zealand Act 1991

2.3.1 Object of the FSANZ Act

The object of the Act is to ensure a high standard of public health protection throughout Australia and New Zealand by means of the establishment and operation of a joint body known as Food Standards Australia New Zealand to achieve the following goals:

- a high degree of consumer confidence in the quality and safety of food produced, processed, sold or exported from Australia and New Zealand
- an effective, transparent and accountable regulatory framework within which the food industry can work efficiently
- the provision of adequate information relating to food to enable consumers to make informed choices, and
- the establishment of common rules for Australia and New Zealand and the promotion of consistency between domestic and international standards applying to public health and consumer protection².

2.3.2 Functions

FSANZ's functions are set out in Section 13 of the Act. These legislative requirements determine the scope of our work: developing food standards for the food regulatory system and working with other parties in the food regulatory system to assure confidence in the safety of food sold in Australia and New Zealand. As a Commonwealth Corporate Entity

² FSANZ Act, section 3

FSANZ can only perform the functions listed in Section 13 or functions that are conferred under another Commonwealth law.

2.3.3 Powers

FSANZ has powers enabling it to do all things necessary or convenient to be done in connection with the performance of its functions.

These powers are listed in section 14 of the FSANZ Act. FSANZ is not empowered to do any act that is not listed in section 14.

2.3.4 Ministerial Direction

The Australian Minister may give the Authority directions, after consulting with the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum, formerly the Australia and New Zealand Food Regulation Ministerial Council). These directions are published on the FSANZ website.³

2.3.5 The Board

The affairs of FSANZ are to be conducted by the Board⁴. The Board is to hold such meetings as are necessary for the efficient performance of the Board's functions⁵. A majority of the members of the Board at the time constitute a quorum. Board members may attend Board meetings by telephone, videolink or other means of communication⁶.

The Board may establish committees to assist it in carrying out its functions⁷.

2.3.6 The Chief Executive Officer

The Chief Executive Officer is appointed by the Board⁸ and is responsible for the day-to-day administration of FSANZ and the control of operations⁹. The Board may delegate some, but not all, of its powers to the Chief Executive Officer and to the staff of FSANZ¹⁰.

2.3.7 FSANZ Staff

FSANZ staff are engaged by the Chief Executive Officer under the *Public Service Act 1999*.

2.4 The Food Regulation Agreement

The Intergovernmental Food Regulation Agreement between the Commonwealth, the states and the territories establishes, for Australia, a co-operative federal system of food regulation. The Agreement was made in recognition of the need to implement a national system of food regulation and to ensure that all sectors in the food supply chain apply their own mechanisms to manage their food safety risks. The Agreement establishes the Ministerial Forum on Food Regulation and the Food Regulation Standing Committee, and authorises the Australian Government to establish FSANZ to perform specific functions in the system.

³ FSANZ Act, subsection 18(3)

⁴ FSANZ Act, section 115 and PGPA Act, section 15

⁵ FSANZ Act, section 122

⁶ FSANZ Act, section 123

⁷ FSANZ Act, section 118

⁸ The appointment process is implemented in accord with the policy of the Australian Government.

⁹ FSANZ Act, section 128

¹⁰ FSANZ Act, section 129

2.5 The Agreement between Australia and New Zealand Concerning a Joint Food Standards System

There is a treaty-level agreement between the Governments of Australia and New Zealand that establishes FSANZ's role in setting and maintaining trans-Tasman food standards. The essential element of the agreement is to extend elements of the Australian food regulation system, in particular the Australia New Zealand Food Standards Code, to include New Zealand.

The agreement:

- provides that the joint food standards system will include the development and maintenance of joint food standards in the Australia New Zealand Food Standards Code, alongside Australia-only standards.
- excludes, subject to opt-in, the specification of maximum residue limits and food hygiene provisions from the scope of the agreement
- provides for New Zealand to determine that other standards shall not apply in New Zealand, and
- provides that the New Zealand minister shall make an agreement with FSANZ each year in relation to the services to be provided by FSANZ to New Zealand and the performance and accountability requirements relating to those services.

2.6 Australia and New Zealand Ministerial Forum on Food Regulation (the Forum)

The Forum is established by the Food Regulation Agreement and has responsibility for the development of domestic food regulatory policy, the development of policy guidelines for setting domestic food standards, the promotion of harmonised food standards, the general oversight of domestic food regulation and standards, and the promotion of a consistent enforcement approach¹¹.

The Forum can, subject to observing procedural requirements, amend or reject a standard developed by FSANZ before the standard is notified. The Forum is advised by the Food Regulation Standing Committee (FRSC), which comprises senior government officials from the Commonwealth and New Zealand, and the states and territories. The Forum will also consult with stakeholders on developing policy guidelines. The FSANZ Chair is an observer and technical adviser at Forum meetings.

Responsibility for developing new food standards sits with FSANZ, which also formally develops and reviews variations to the Food Standards Code. FSANZ must notify its decisions to the Forum. Ministers may return any newly developed standard to FSANZ for review.

Formal meetings of the Forum occur once or twice each year. They are organised by the Food Regulation Secretariat, based in the Commonwealth Department of Health. Policy guidelines issued by the Forum are published on the FSANZ and Department of Health websites

¹¹ Clause 3 of the Agreement.

FSANZ must have regard to¹² the Forum's guidelines when it develops or reviews food standards.

2.7 Ministerial policy statement on the food regulatory system

The Forum has made an overarching policy statement on the food regulatory system. The statement provides a strategic context for the food regulatory system in Australia and New Zealand and notes the importance of facilitating FSANZ's independence as an evidence-based developer of food standards.

The policy statement articulates:

- those who are collectively responsible for the food regulatory system;
- the scope of the food regulatory system, and its broad objectives;
- a means for deciding when regulatory intervention may be appropriate;
- the specific characteristics of the food regulatory system that are considered desirable;
- the partners, stakeholders, influencers and regulated bodies that interact with food regulators, and the nature of these relationships; and
- areas where there are opportunities for continued improvement.

2.8 The Food Regulation Standing Committee (FRSC)

FRSC has the functions of co-ordinating policy advice to the Forum and ensuring a consistent approach to the implementation and enforcement of food standards¹³. The FSANZ CEO attends FRSC meetings as a technical adviser and observer and provides direct input to FRSC policy development as an ex-officio member of the FRSC Strategic Policy Working Group.

3. The FSANZ Governance Framework

The framework describes the system the Board has established to assure itself and its stakeholders that it has addressed major indicators of good governance in a manner contributing to high performance.

The principal elements of the governance framework are leadership, compliance, collaboration, risk management, accountability and planning.

3.1 Leadership, ethics and culture

The Board and the Executive are the principal leadership groups within FSANZ. They set the tone for the agency's operations by modelling good governance behaviours and demonstrating a commitment to achieving Government objectives through auditable processes.

Leaders have dual responsibilities around governance, including:

- ensuring implementation, evaluation and improvement of governance structures and processes; and
- enacting and influencing good governance through their own performance and behaviours.

¹² The Forum was given power to issue guidelines in order that it could direct, rather than react to, decisions of FSANZ. Guidelines must be consistent with the objectives set in subsection 18(1).

¹³ Clause 4 of the Agreement

The Board and Executive promote a learning environment that encourages innovation and continuous improvement to achieve better outcomes consistent with efficient, effective and ethical delivery.

3.2 Compliance

Performance of the standards-setting function demands strict compliance with the procedural requirements of the FSANZ Act. To assure compliance, FSANZ has invested heavily in systems such as its Standards Management System and Contacts Database System.

FSANZ has also invested heavily in financial and related corporate systems to ensure compliance with PGPA Act requirements.

3.3 Collaboration

FSANZ has an open and transparent approach to collaboration. We actively seek and encourage a culture of cooperation with a wide range of stakeholders. Collaboration is a key consideration in developing standards and for all FSANZ decisions.

For successful food regulation, it is imperative to build and maintain stakeholder trust in the fairness and objectivity of the standards developing agency. FSANZ attempts to earn and maintain this trust by implementing a transparent approach to our dealings with:

- the public, consumer organisations and the media;
- Australian, state and territory governments and the New Zealand Government;
- primary producers and the manufacturing sector;
- retail outlets and food services providers;
- public health professionals;
- international agencies and organisations; and
- our partners in the scientific community.

3.3.1 Minister and Parliamentary liaison

FSANZ provides advice and information to the office of the responsible Australian Government minister. We seek feedback on our performance in this function from the Department's Ministerial, Governance and Cabinet area and we measure efficiency annually through the Portfolio Budget Statement (PBS) measures. We also provide information on FSANZ-related matters to other agencies such as the Department of Health, for inclusion in correspondence and briefings. There are established principles for communicating at this level and compliance with these principles is considered very important in governing this relationship effectively.

3.3.2 External stakeholder communication

FSANZ makes information available to all stakeholders in a number of ways including:

- Notification Circulars (almost 5000 subscribers) which include notices that are required to be given to the public, to submitters and appropriate government agencies, under the FSANZ Act
- email newsletters such as Food Standards News (more than 6,500 subscribers)
- providing information in multiple languages on our website
- social media, including YouTube, Twitter, Facebook and Instagram

3.3.3 Stakeholder groups

FSANZ has established three key stakeholder groups to exchange information and enhance our understanding of the issues facing these groups. These groups are the:

- Retailers and Manufacturers Liaison Committee (industry representatives)
- Consumer and Public Health Dialogue (consumer and public health representatives)
- Jurisdictional Forum (government representatives)

3.3.4 Internal stakeholder forums

There are two key internal stakeholder forums in FSANZ. They are the EL2/Exec Meeting and the Staff Forum meetings.

The EL2/Exec Meeting is comprised of all EL2s and the Executive. The group meets formally with the Executive regularly. The role of the group is to allow for information sharing and assuring the flow of information from the Executive to sections managed by participants. The meeting is also a forum for dialogue on strategic issues.

The Staff Forum is a representative cross agency group which meets to discuss and follow through on key matters for FSANZ staff, primarily relating to workplace conditions and practices. A forum representative also meets regularly with the Executive to report on the forum's activities. Issues discussed include: succession planning, workloads, professional development, staff retention, staff survey planning and the FSANZ Enterprise Agreement.

Internal stakeholder engagement is a priority for FSANZ and seen as pivotal to communicating well with staff and effectively governing staff relationships in the agency.

3.4 Risk management

Responsibility for risk management in FSANZ sits primarily with the Board, which has obligations under the PGPA Act. However, that responsibility cascades through the agency and is shared by all staff. All staff must be accountable for the effective and efficient use of Government resources. Good risk management supports this aim.

Food-related risks are analysed using internationally accepted methodologies that are described in *Risk Analysis in Food Regulation*.

The Board has established an integrated risk management system. Risks have been identified and rated. Higher level risks have been assessed to ensure that appropriate mitigation action is taken. Risk is identified regularly and the development of risk management strategies is an essential aspect of project development.

The inter-relationship between these processes gives the Board, the Finance Audit & Risk Management Committee (FARMC), Executive and staff a sound platform on which to coordinate activities to manage and control potential and identified agency risks.

3.4.1 Risk assessment

Identified risks are initially assessed and rated for inherent levels of risk. Following the development of mitigation strategies, all risks are re-assessed for residual risk¹⁴.

¹⁴ Residual risk is the level of risk that exists after mitigation.

Any risk with an initial inherent rating of *high* must be presented to FARMC for consideration. After the development of mitigation strategies, FARMC, on behalf of the Board, reviews the plans to mitigate these risks. It is intended to reduce the risk level to low in each case.

3.4.2 Fraud control

FSANZ fraud control policies and plans are incorporated into the integrated risk management system. We have Fraud Policy Statement and Fraud Control Plan which outlines governance responsibilities relating to fraud prevention for all staff. Preparation of this plan represents one of FSANZ's obligations in complying with the Commonwealth Fraud Control Guidelines. The fraud control framework includes undertaking risk assessments, education and awareness, fraud recording, reporting and evaluation of the effectiveness of mitigation strategies. These actions underpin a robust approach to fraud prevention and ultimately, the promotion of voluntary compliance.

In an environment of increasing growth in business, ongoing Parliamentary and public scrutiny and an equally increasing sophistication in attempts to obtain fraudulent access to government services and resources, fraud control requires vigilance and robust prevention planning.

Fraud and corruption prevention in FSANZ is everyone's responsibility.

3.4.3 Conflicts of Interests

Avoiding conflicts of interest is an important part of sound governance. Board members are required by law to declare any possible conflicts of interest and exclude themselves from any decision making that could be considered a conflict. Under subsection 125(6) of the FSANZ Act, entries recorded in the register of Board members' interests must be published on the Internet. The register is updated on a regular basis.

The Board Charter outlines the requirements for Board members regarding the declaration of conflicts of interest. At each meeting the Board considers declared conflicts of interest and determines an appropriate action in each case.

The Charter states that Board members will:

- for each meeting, consider each agenda item and identify any potential conflicts of interest and declare them to the Board before or at the start of each meeting; and
- follow the "*FSANZ Guide to Declarations of Interests*" for the declaration and registration of material personal interests, and act consistently with FSANZ Act and PGPA Act requirements in respect of member's personal interests.

3.5 Accountability and clear reporting

FSANZ has incorporated its external reporting obligations into its daily operations. Through its website, it provides a high level of transparency about its operations, particularly in the performance of its standards setting function.

3.5.1 Internal Conformance – Board, the Finance Audit and Risk Management Committee (FARMC) and the People, Culture and Remuneration Committee (PCRC)

Board

FSANZ has a twelve member Board, which has a Charter. Members are appointed by the Australian Government and include three members nominated by the New Zealand Government. The FSANZ CEO is an *ex officio* member of the Board.

The Board meets regularly and meeting outcomes are published on the FSANZ website.

FARMC

The Board has established the FARMC, which meets regularly and is supported by a Charter. It is through this committee that matters relating to audit and risk management are monitored and continuous improvement is reported.

In support of the FARMC there is a specific position in the Board Secretariat responsible for support to FARMC.

PCRC

The Board has established the PCRC to assist the Board in fulfilling its governance responsibilities in relation to the people, culture and remuneration functions of the agency.

FSANZ also has a structure in place that supports separation of duties for the operational and strategic management of governance across the agency.

3.5.2 External Accountability

Through the Department of Health, FSANZ must outline projected budget expenditure for program delivery in the annual Portfolio Budget Statements (PBS).

Program outcomes are reported to Parliament through the Annual Report which is also made available publicly after it has been tabled in Parliament.

The Board and Executive ensure that full compliance with reporting requirements of the PGPA Act and the FSANZ Act are met.

3.6 Planning & Performance Monitoring

3.6.1 Planning

FSANZ manages financial and enterprise or non-financial planning at the strategic and operational level. The process is overseen by the Board, the FARMC and Executive.

The Board prepares a four year Corporate Plan, which is reviewed annually, as required by the PGPA Act and Rules.

All Sections develop annual plans that reflect FSANZ strategic and operational goals. In addition, individual officers must complete an Individual Work and Development Plan (IWDP) that is reviewed annually.

3.6.2 Performance Monitoring

Performance against PBS metrics is reported and made available to the public through the annual performance statements that are published in the Annual Report.

3.6.3 Board performance

The Board Charter provides that the Board will review its performance¹⁵ and provides a standard for that review. The Board has also engaged external reviews of its performance and has agreed to do so in the future.

4 Review and evaluation of FSANZ Governance Framework

Accountability for evaluating the governance framework sits with the General Manager, Food Safety and Corporate, in conjunction with Executive and relevant FSANZ staff.

Annual evaluation is part of the planning schedule. The evaluation process commences after the PBS is tabled in Parliament and the planning for the new financial year is completed. It is an important process that supports the ongoing maturity and effectiveness of FSANZ's risk management.

Formal external review of FSANZ governance is provided through the internal audit program. Due to the low risk nature of the work carried out by FSANZ, external review can be carried out less frequently. Reports from such a review can be used as benchmark information and contribute to the continuous improvement of governance. FARMC will receive evaluation reports and outcomes will be included in the Annual Report.

5 Dealing with governance breaches and complaints

A balanced governance system has an effective management system, a dynamic risk management system and a robust internal audit program. FSANZ has such a mechanism in place for detecting, recording and dealing with any governance breach or complaint.

The internal audit program and external audit functions are good mechanisms for measuring effective governance and assessing if a governance breach has occurred. Internal audit enables governance processes to be assessed, classified and investigated to determine if a breach has occurred. It can identify the cause and ultimately make recommendations for continuous improvement to reduce the chance of recurrence. This system has proven to be adequate for addressing any governance-related matters which have arisen.

There is a designated complaints officer role and a complaints mechanism in FSANZ, which is outlined in the FSANZ Service Charter. In addition, arrangements have been implemented for the purposes of the *Public Interest Disclosure Act 2013*.

¹⁵ Board Charter, section 11.