

Submission on Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015



11th November 2015

Many thanks for the opportunity to make a submission to this Inquiry.

Friends of the Earth has a number of concerns with the proposed Bill. These include:

- The deletion of the definition of GMO and GM product from the Food Standards Act as the definitions in the Food Standards Code are much weaker and could exclude certain new GM techniques.
- The removal of the reporting requirements of FSANZ to the Office of the Gene Technology Regulator when it regulates a GMO or GM product.
- The changes to the make up of the FSANZ board which opens up the possibility of even greater (undue) industry influence.

Our specific concerns are as follows:

Schedule 1 Main amendments

1 Subsection 4(1) (definition of appropriate government agency)

Repeal the definition, substitute:

appropriate government agency means:

(a) the relevant Department of State of the Commonwealth, a State, a Territory or New Zealand administered by a Minister who is a member of the Forum on Food Regulation; or

(b) any other body that has an officer on the Food Regulation Standing Committee; or

(c) any other body or officer of the Commonwealth, a State, a Territory or New Zealand that the Authority considers has a particular interest in the relevant matter.

This amendment removes prescribed lists of Commonwealth, State, Territory and New Zealand Departments and authorities. We are concerned by the removal of the Office of the Gene Technology Regulator (OGTR) from this list. We believe that communication across agencies is vital in ensuring an effective and consistent regulatory system for GMOs. FSANZ should be compelled to inform the OGTR if it makes a regulatory decision regarding GMOs.

4 Subsection 4(1)

Repeal the following definitions:

(a) definition of Gene Technology Regulator;

(b) definition of GMO;

(c) definition of GM product;

Friends of the Earth is concerned that proposed changes to the Food Standards Australia New Zealand Act 1991 that would delete the definitions of GMO (genetically modified organism) and GM product from the Act are an attempt to deregulate risky new genetic engineering techniques by stealth.

The proposed amendments would delete the definitions of GMO (genetically modified organism) and GM product from Section 4 of the Act.¹ Once they are gone the only definitions remaining are those in the Food Standards Code (Standard 1.5.2) which are not as broad and could be amended without Parliamentary debate. There is no coherent justification for these changes in the Explanatory Memorandum for the Bill.²

The definition of GMO in the Food Standards Australia New Zealand Act 1991 is currently the same as that in the Gene Technology Act 2000 and refers to an organism (or progeny of an organism) that has been modified by gene technology. The Act defines gene technology as “any technique for the modification of genes or other genetic material”.³ This definition would clearly include new GM techniques unless they were specifically exempted. We are concerned that by deleting this definition from the Act FSANZ is attempting to deregulate these techniques by stealth.

The definition of gene technology in the Food Standards Code is not as broad and is defined as “recombinant DNA techniques that alter the heritable genetic material of living cells or organisms”. Certain new GM techniques may not be covered under this definition. For example, in 2012 FSANZ convened an expert panel – comprised almost entirely of genetic engineers with gene technology patents – to look at whether certain new GM techniques should be considered genetic engineering. The panel expressly concluded that one of these techniques, “ODM [oligo-directed mutagenesis] is not a recombinant DNA technique.”⁴

Likewise, a number of new GM techniques, such as Pioneer H-Bred’s proprietary seed production technology (SPT) involve a GM parent but the GM crop industry is arguing that the final breeding product is not GM. Whilst these products would be defined as GMOs under the Gene Tech Act it is not clear that they would be included under the definition in the Food Standards Code.

The full implications of these changes in the context of new GM technologies need full examination before these amendments are considered.

Friends of the Earth is calling for:

- A moratorium on the commercialisation of new GM techniques until our regulatory system for GMOs is adapted to deal with the potential risks posed by them.
- FSANZ to treat all new GM techniques as GMOs.
- A stand alone definition of GMO in the Food Standards Australia New Zealand Act based on - or the same as - that in the Gene Technology Act.

11 Section 19

Repeal the section.

This repeals the following section:

19 Notices to be given to the Gene Technology Regulator

If a provision of this Act requires the Authority to give a notice concerning an existing or proposed food regulatory measure to the Gene Technology Regulator, the Authority is only required to give

the notice if the food regulatory measure relates to food that is or contains a GMO or a GM product.

This removes FSANZ's requirement to notify the Gene Technology Regulator of any of its food regulatory measures that relate to food that is or contains a GMO or a GM product. There is no coherent justification for these changes in the Explanatory Memorandum for the Bill.⁵

Friends of the Earth strongly oppose these proposed changes. As already stated, we believe that communication across agencies is vital in ensuring an effective and consistent regulatory system for GMOs. FSANZ should be compelled to inform the OGTR if it makes a regulatory decision regarding GMOs.

23 Paragraph 50(2)(b)

Omit "assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims, taking", substitute "take".

According to the Explanatory Memorandum this removes the "requirement for FSANZ to assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims to reflect the fact there are no such criteria."⁶ However, there are criteria set out in the Standard⁷ and Friends of the Earth does not believe that a satisfactory reason for deleting this section has been given.

41 Paragraph 76(2)(b)

Omit "assess the draft variation against the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims, taking", substitute "take".

Friends of the Earth opposes this amendment for the same reason.

Repeal of Subsections 116A (1) to (5)

This changes the make up of the FSANZ board so that members are no longer nominated by consumer organisations, the CEO of the National Health and Medical Research Council and organisations, or public bodies, established for purposes relating to science or public health and are instead appointed by the Minister. Friend of the Earth is concerned that this opens up the possibility of even greater (undue) industry influence and opposes the deletion of these subsections.

Elimination of public notice provisions

The elimination of public notice provision for draft variations approved by the Authority except through the website, will unnecessarily limit public information and the public's engagement in food issues. While Friends of the Earth recognises that newspaper notices are expensive and reaching increasingly small audiences, they still have substantial reach, particularly in rural and regional areas. A more sophisticated approach to notification requirements is needed. We believe that, in the event of any proposed legislative or regulatory amendments, as a minimum the Act should require the mandatory notification of subscribers to FSANZ's email updates and other relevant stakeholders.

For further information contact Louise Sales, Emerging Tech Project Coordinator,
louise.sales@foe.org.au

¹ The Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015, FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT (FORUM ON FOOD REGULATION AND OTHER MEASURES) BILL 2015 EXPLANATORY MEMORANDUM,

http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5542_ems_0c02f9d0-bbf2-4b81-8f05-21b496ccc90e/upload_pdf/503834.pdf;fileType=application%2Fpdf

² *Ibid.*

³ Gene Technology Act 2000, <https://www.comlaw.gov.au/Details/C2011C00539>

⁴ FSANZ (2012) *New Plant Breeding Techniques: Report of a Workshop hosted by Food Standards Australia New Zealand*, p. 19.

<http://www.foodstandards.gov.au/publications/Documents/New%20Plant%20Breeding%20Techniques%20Workshop%20Report.pdf>

⁵ http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5542_ems_0c02f9d0-bbf2-4b81-8f05-21b496ccc90e/upload_pdf/503834.pdf;fileType=application%2Fpdf

⁶ FOOD STANDARDS AUSTRALIA NEW ZEALAND AMENDMENT (FORUM ON FOOD REGULATION AND OTHER MEASURES) BILL 2015 EXPLANATORY MEMORANDUM, p. 6,

http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5542_ems_0c02f9d0-bbf2-4b81-8f05-21b496ccc90e/upload_pdf/503834.pdf;fileType=application%2Fpdf

⁷ Australia New Zealand Food Standards Code - Standard 1.2.7 - Nutrition, Health and Related Claims, <https://www.comlaw.gov.au/Details/F2015C00756>