

**SENATE COMMUNITY AFFAIRS  
LEGISLATION COMMITTEE**

**Consideration of Legislation Referred  
to the Committee**

**AUSTRALIA NEW ZEALAND FOOD AUTHORITY  
AMENDMENT BILL 2001**

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## **MEMBERSHIP OF THE COMMITTEE**

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### **Substitute Member**

Senator Michael Forshaw for Senator Evans for the Committee's inquiry into the Bill	ALP, New South Wales
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# REPORT

## AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001

### THE INQUIRY

1.1 The Australia New Zealand Food Authority Amendment Bill 2001 (the Bill) was introduced into the Senate on 8 February 2001. On 28 February 2001, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 2 of 2001), referred the Bill to the Committee for report by 29 March 2001. The reporting date was subsequently extended to 3 April 2001. The matters referred to the Committee for inquiry were whether major changes to the operation of the Australia New Zealand Food Authority (ANZFA) were proposed without any public consultation and whether changes proposed to the Ministerial Council and the ANZFA Board potentially conflict with ANZFA's public health and safety objective.<sup>1</sup>

1.2 The Committee received 12 submissions. These are listed at Appendix 1 and may be accessed through the Committee's web site at: [http://www.aph.gov.au/senate\\_ca](http://www.aph.gov.au/senate_ca) The Committee held a public hearing on 29 March 2001 and details are listed in Appendix 2.

### THE BILL

2.1 The Bill amends the *Australia New Zealand Food Authority Act 1991* (the Act) to implement those aspects of the new food regulatory system agreed to by all Australian jurisdictions that require immediate Commonwealth legislative change.<sup>2</sup> The changes reflect the new food regulation arrangements set out in the Inter-governmental Food Regulation Agreement<sup>3</sup> (IGA) agreed to by members of the Council of Australian Governments (COAG) on 3 November 2000.<sup>4</sup>

2.2 The Bill seeks to:

- establish a new statutory authority, Food Standards Australia New Zealand (FSANZ) which is to be based upon the existing ANZFA;
- establish a new Board to administer FSANZ with membership composition different to the current ANZFA Board. The Board will be comprised of a Chairperson, the Chief Executive Officer, 2 members nominated by the New Zealand lead Minister on the Council, a member who has a background in consumer rights, and not fewer than one, nor more than 5, other members;

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1 Selection of Bills Committee, *Report No. 2 of 2001*

2 Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, p. 1

3 Copies of the Inter-Governmental Food Regulation Agreement 2000 may be obtained at <http://www.dpmpc.gov.au/docs/DisplayContents1.cfm?&ID=86> and is reproduced at Appendix 3

4 See *Submission No. 11*, Commonwealth Department of Health and Aged Care, p. 1

- give legislative recognition to the new Ministerial Council established by the IGA, the Australia New Zealand Food Regulation Ministerial Council (based on the existing Council of Health Ministers);
- amend the functions of FSANZ to provide for the development, review and approval of standards which are to be notified to the Ministerial Council;
- indicate that the role of the new Ministerial Council will be to develop domestic food regulation policy and policy guidelines for setting domestic food standards;
- indicate that the new Ministerial Council may direct FSANZ to review any standard or reject any proposed draft standard;
- amend the procedure for publication and notification of standards and variations of standards; and
- make consequential and transitional arrangements from ANZFA to FSANZ.<sup>5</sup>

2.3 Other elements of the new food regulatory system that do not require legislative change include the establishment of a Food Regulation Standing Committee to support the Council and a mechanism established by the Ministerial Council for the provision of stakeholder advice by interested parties.

## ISSUES

### **Major changes proposed to the operation of ANZFA and public consultation**

3.1 Some organisations expressed concern about the level of consultation in the post Blair Review period and the drafting of the Bill.<sup>6</sup> The Committee carefully considered this issue with all witnesses during its public hearing.<sup>7</sup>

3.2 The Blair Review was established by the Prime Minister in 1997 to make recommendations to government on how to ‘reduce the regulatory burden on the food sector and improve the clarity, certainty and efficiency of the current food regulatory arrangements while, at the same time, protecting public health and safety’.<sup>8</sup> The Blair Review involved extensive public consultation with all stakeholders including government, industry, business, consumers and the community in general.<sup>9</sup> In addition, the Blair Review received over 170 submissions and conducted numerous public hearings and workshops.<sup>10</sup> The new food regulatory system was subsequently developed through a formal process established by COAG Senior Officials to develop a whole-of-government response to the Blair Report

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5 See Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, pp. 1-2. Further detail is provided at pages 8-39

6 See *Submission No. 5*, Public Health Association of Australia; *Submission No. 6*, Australian Medical Association; *Submission No. 8*, Australian Consumers Association; and *Submission No. 2*, Dieticians Association of Australia. See also, *Transcript of Evidence*, pp. 1, 3, 6

7 *Transcript of Evidence*, pp. 1-6, 19-20 and 28

8 Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, p. I

9 See Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, p. 10

10 See *Submission No. 11*, Commonwealth Department of Health and Aged Care, p. 6; See also, *Transcript of Evidence*, Senator Knowles, p. 4



recommendations. The process involved consultation with all relevant Commonwealth and State/Territory Government Departments, as well as with the New Zealand Government. Key food industry organisations representing all parts of the food supply chain and consumer and public health groups were informally consulted during the process of developing the model.<sup>11</sup>

3.3 The Department of Health and Aged Care (DHAC) advised the Committee that the usual process for developing legislation was followed in relation to this Bill:

...I would venture, from my experience, that is typically the case. In other words, there is a report, a public inquiry process and negotiations between jurisdictions; they take a decision; and then it gets transcribed into legislation, and often then there is a detailed consultative process about the bits and pieces.<sup>12</sup>

3.4 Other organisations advised the Committee that they felt appropriate levels of consultation had occurred.<sup>13</sup> The Australian Food and Grocery Council (AFGC), for example, detailed its contribution to the process:

We have made representations to government on the basis of the recommendations. We were heavily involved – in fact, we were even represented on the so-called steering committee of 37 and we made representations and submissions. I think we also made further submissions to government on the basis of the Blair review recommendations, and we have had ad hoc discussions at the officials' level with the department of health on those arrangements. We were not intimately involved in the discussions and the negotiations and nor would we expect to be, between the jurisdictions.

The submissions we made to the department were in response to a call for submissions by the department, by the regulatory reform task force. Indeed, the one to ANZFA was also made in the courses to submissions. I am quite certain that other stakeholders would have been made aware of those reviews.

...when we were approached by the department of health to be given a briefing on what was transpiring, they said quite categorically that it was one of a series of briefings that they were giving to a number of stakeholder groups.<sup>14</sup>

3.5 Taking all the evidence into account, the Committee is satisfied that extensive public consultation has taken place in relation to the development of the food regulation arrangements comprised in the Bill and the IGA.

### **The Ministerial Council and FSANZ Board: the public health and safety objective**

3.6 Some organisations expressed concern that the proposed changes to the Ministerial Council and FSANZ Board might conflict with the public health and safety objective contained in section 10 of the Act.<sup>15</sup>

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11 Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, p. 10

12 *Transcript of Evidence*, Department of Health and Aged Care, p. 28

13 *Submission No. 11*, Commonwealth Department of Health and Aged Care, p. 6. See also, *Submission No. 3*, Australian Food and Grocery Council, pp. 5, 12-13

14 *Transcript of Evidence*, Australian Food and Grocery Council, pp. 19-20

### *Membership of the Ministerial Council*

3.7 Concern about the new Ministerial Council relates to the decision by COAG, embodied in the IGA, to allow Ministers responsible for portfolios other than health to be members of the Council. The IGA provides that the Ministerial Council shall consist of one or more members representing each jurisdiction (Commonwealth, States, Territories and New Zealand). One member from each jurisdiction must be the Minister for Health. Such other members with relevant responsibility as are nominated by each jurisdiction may also be included on the Council. Significantly, however, the Council will be chaired by the Commonwealth Minister for Health. As these membership arrangements were agreed to by COAG (and are not contained in the Bill), they cannot be changed by the unilateral action of the Commonwealth.

3.8 The principal concern of some witnesses was in relation to the composition of the new Ministerial Council and that the inclusion of non-health ministers could be in conflict with the objective to protect public health and safety and with the spirit of the ANZFA Act 1991.<sup>16</sup> It was also claimed that the inclusion of non-health ministers would weaken the influence of Health Ministers on the Council.<sup>17</sup> Some amendments were suggested to address the perceived potential conflict between commercial interests and public health and safety. The Australian Consumers Association (ACA), for example, advocated that the Bill should be amended to expressly provide that the State, Territory, Commonwealth and New Zealand Health Ministers are the lead ministers of the Council and to ensure that they cannot be substituted by ministerial colleagues from other portfolios.<sup>18</sup>

3.9 The Committee notes DHAC's advice, however, that all jurisdictions have nominated Health Ministers as their lead minister on the new Ministerial Council. The lead minister is the only minister who may vote on behalf of a jurisdiction at a meeting of the Ministerial Council.<sup>19</sup> Other organisations stressed that the public health and safety objective will be entrenched in the structure of the regulatory process for the following reasons:

- the public health and safety focus of the new Ministerial Council is assured by arrangements requiring the Chair to be the Commonwealth Minister for Health;
- each jurisdiction is to provide representation that includes a Health Minister;
- the Secretariat to the Council is to be from the Commonwealth Health portfolio; and

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15 Subsection 10(1) states that the objectives, in descending order of priority, are: (a) the protection of public health and safety; and (b) the provision of adequate information relating to food to enable consumers to make informed choices; and (c) the prevention of misleading or deceptive conduct. Subsection 10(2) states that FSANZ must, when developing or reviewing food measures, have regard to particular matters. See also, *Transcript of Evidence*, p. 8

16 *Submission No. 2*, Dieticians Association of Australia, p. 2

17 *Submission No. 7*, Dr Rosemary Stanton, p. 2; See also, *Submission No. 4*, FACTS, p. 2

18 *Submission No. 8*, Australian Consumers Association, pp. 3-4. See also *Submission No. 5*, Public Health Association of Australia, p. 3: the PHAA also suggested that the Bill be amended so that the Council is comprised only of Health Ministers. PHAA believes that this will ensure that health will continue to receive the primacy required.

19 *Submission No. 11*, Department of Health and Aged Care, pp. 2-3. See also, *Transcript of Evidence*, Department of Health and Aged Care, pp. 25-27

- the Ministerial Council must approve appointments to the FSANZ Board, providing further safeguards for ensuring that public health and safety considerations remain paramount.<sup>20</sup>

3.10 In addition, AFFA advised the Committee that through the portfolio Minister's involvement on the Council, AFFA will be well placed to assist industry in complying with regulatory requirements and also to examine alternative cost-effective co-regulatory approaches to managing food safety.<sup>21</sup>

3.11 The AFGC rejected the proposition that the new arrangements provide for potential conflicts with public health and safety objectives, for a number of reasons:

...the legislation's objectives are clearly enunciated; the checks and balances in the arrangements are improved; there is greater accountability imposed upon the ministerial council. Concerns that wider representation in the processes is a potential source of conflict is based upon a false premise, that being that the industry's best interests conflict with public health and safety objectives; quite the contrary is the case. Rather than dilute the influence of the health portfolio, might I suggest that it is likely to enhance the health perspective of other portfolios.<sup>22</sup>

3.12 The Committee has concluded that the arrangements in relation to the membership of the new Ministerial Council will not undermine the primacy of public health and safety in the development of food standards.

#### *Appointment of members to the Board of FSANZ*

3.13 Some organisations expressed concern about the proposed composition of the FSANZ Board (as outlined in paragraph 2.2). Concerns included that:

- public confidence in the food supply and food regulation in Australia may be reduced because of the potential for influence of commercial, rather than public health interests directing FSANZ operations;<sup>23</sup>
- the appointment of Board members by nomination rather than election, could result in public health and consumer interests being circumvented;<sup>24</sup> and
- the removal of the current requirement that one of the members of the Board be an officer of a State or Territory authority with responsibility for matters relating to public health, will weaken the interest of public health and safety.<sup>25</sup>

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20 *Submission No. 3*, Australian Food and Grocery Council, p. 2

21 *Submission No. 12*, Department of Agriculture, Fisheries and Forestry, p. 4

22 *Transcript of Evidence*, p. 16

23 See, for example, *Submission No. 2*, Dieticians Association Australia; *Submission No. 8*, Australian Consumers Association; *Submission No. 5*, Public Health Association of Australia; *Submission No. 9*, Ms Dorothy Francis, p. 1; and *Submission No. 7*, Dr Rosemary Stanton, p. 2

24 *Submission No. 2*, Dieticians Association Australia, p. 3; See also, *Submission No. 9*, Ms Dorothy Francis, p. 1

25 *Submission No. 2*, Dieticians Association Australia, p. 3

3.14 DHAC, however, rejected the assertion that too many Board positions might be allocated to industry. DHAC advised that the new Board arrangements were intended to reflect the new Ministerial Council arrangements:

...we were essentially trying to broaden the scope. Hypothetically, it could be stacked with five members all with industry interests. In my view, no government will do that. They just wanted a broad possible selection so that they could make expertise based views...

But the overwhelming requirement for this board – and required by the CAC Act – is to have regard to their legislative responsibilities. In other words, irrespective of their background, they are to be an expertise based board and they are to put public health and safety considerations foremost. In they do not act in terms of the requirements of that act, they are in some difficulty.<sup>26</sup>

3.15 The AFGC contended that the provisions equally allow for a majority of the Board members to be community rights representatives:

It is just nonsense. Anybody who is appointing representatives to the Board will come through with a balance of people and I expect that those portfolios will be represented across the Board. No, I do not see there being a trade expert, a food processing expert, a farming expert, a retailing expert and any of the others, that making up five industry representatives. I think that would be a silly outcome.<sup>27</sup>

3.16 The Committee was also referred to the oversight mechanism provided in the Bill – that is, the Ministerial Council will oversight the appointment of members of the Board. The AFGC asserted that it is highly unlikely that the Minister (the Chairperson of the Council) would appoint members that would weaken the role of the Council and even more unlikely that the Council would approve such appointments.<sup>28</sup> The AFGC stated that it:

...considers that oversight of the appointment of members of the Board by the Ministerial Council is an additional and sufficient safeguard to ensure that no sector or interest group has undue influence on the conduct of the Board.<sup>29</sup>

3.17 The AFGC also indicated that there are substantial benefits to be derived from the proposed Board arrangements:

...rather than dilute the primacy of public health and safety, you will actually increase the understanding of the other portfolios of its primacy, and there will be a mutual, supportive cooperative approach in terms of other portfolios understanding the perspective of other parts of industry when it is not a matter of public health and safety...<sup>30</sup>

3.18 In relation to the proposed removal of the current requirement that a Board member be an officer of a state or territory with responsibility for matters relating to public health, the

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26 *Transcript of Evidence*, Department of Health and Aged Care, pp. 27-28

27 *Transcript of Evidence*, Australian Food and Grocery Council, p. 22

28 *Submission No. 3*, Australian Food and Grocery Council, p. 16

29 *Submission No. 3*, Australian Food and Grocery Council, p. 16

30 *Transcript of Evidence*, Australian Food and Grocery Council, p. 21

DHAC advised this proposal stemmed from the decision to separate policy from food standard setting responsibilities.<sup>31</sup>

3.19 Another concern of the ACA was that, whilst the Bill retains a position on the Board for a member with a background in consumer rights, it does not retain the requirement in the Act that other members of the Board must have expertise in any one of a number of specified fields, one of which is consumer rights. The Committee was assured however, that this drafting anomaly has been identified and will be rectified by amendment.<sup>32</sup>

*Changes to the requirement of Board members to declare interests*

3.20 The Bill proposes to amend section 50 of the Act so that Board members need only notify the Minister of any 'material personal interest' they have in a matter being considered, or about to be considered. The current requirement of the Act is that Board members notify the Minister of any 'direct or indirect pecuniary interest'.

3.21 Some organisations expressed concern that the proposed amendment would be less transparent than is currently the case.<sup>33</sup> The Committee was told that the requirement for personal interest disclosure is important in the current environment where so much research is funded by industry.<sup>34</sup> The Committee was assured, however, that the amended disclosure requirement will include pecuniary interests and Board members will be subject to the same obligations as directors of other Commonwealth authorities under the *Commonwealth Authorities and Companies Act 1997*.<sup>35</sup> DHAC advised that the proposed new requirements for disclosure are superior to the current requirements:

The advice from parliamentary council was that that was more wide sweeping in the onus it put on board members, because a 'person' was generally understood to be an associate, a spouse, a partner or whatever - so it is broader in its application. 'Material interest' covers both pecuniary and indirect interests, et cetera.<sup>36</sup>

3.22 The Committee is confident that the proposed arrangements in relation to the composition of the FSANZ Board will not conflict with the public health and safety objective.

## **Conclusion**

3.23 The Committee is satisfied that the new arrangements for food regulation, as embodied in the IGA, and complemented by the provisions of this Bill, will strengthen the primacy of public health and safety in food regulations. The extensive consultation that has taken place has resulted in a food regulatory process that is grounded in sound science. The

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31 *Transcript of Evidence*, Department of Health and Aged Care, p. 28

32 *Transcript of Evidence*, Department of Health and Aged Care, p. 28

33 *Submission No. 5*, Public Health Association of Australia, p. 6. See also *Submission No. 8*, Australian Consumers Association, p. 10

34 *Transcript of Evidence*, Australian Consumers Association, p. 14

35 Explanatory Memorandum, *Australia New Zealand Food Authority Amendment Bill 2001*, pp. 34-35

36 *Transcript of Evidence*, Department of Health and Aged Care, p. 26

new streamlined regulatory practice is consistent with a move toward national uniformity and international best practice.

### **RECOMMENDATION**

4.1 The Committee reports to the Senate that it has considered the Australia New Zealand Food Authority Amendment Bill 2001 and **recommends** that the Bill proceed.

Senator Sue Knowles

Chairman

April 2001

# MINORITY REPORT

## AUSTRALIAN LABOR PARTY

### AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001

#### OVERVIEW

The Opposition Senators agree that action is needed to tighten the regulation of food in Australia. There is also a need to sort out the problems caused by the overlapping responsibilities and legislation amongst local, State and Federal jurisdictions and between the various Federal Ministries and Departments with food and food safety responsibilities.

It is the Opposition's long held view that any such changes must ensure that the prime objective of protecting the health and safety of Australians is not compromised.

The way in which Governments handled the Bovine Spongiform Encephalopathy issue in the United Kingdom and Europe has resulted in a crisis of consumer confidence in food safety regulators and food safety in general. This sentiment has also spilled over from concern about genetically modified foods to become a general sensitivity about food quality and safety amongst European and Australian consumers.

The continued health of the food industry depends therefore on public confidence in food regulation as well as clear, certain and efficient regulatory arrangements.

This Bill proposes to implement those aspects of a new food regulatory system that have been agreed by State, Territory and Commonwealth jurisdictions which require Commonwealth legislative change as a means of decreasing the regulatory burden on the food sector.

However there are a number of major concerns which should be addressed if this legislation is to have the desired effect of improving the efficiency, clarity and certainty of food regulation in Australia while maintaining public confidence in the system.

**As a means of improving the legislation, the Opposition will move amendments addressing those concerns when the Bill is debated.**

#### LACK OF PUBLIC CONSULTATION

In their opening statements and in evidence given to the Senate Committee the Australian Consumers Association (ACA), the Dieticians Association of Australia (DAA) and the Public Health Association of Australia (PHAA), all expressed concern about the lack of consultation on the new food regulatory model outlined in the Inter Governmental Agreement and underpinned by the ANZFA Amendment Bill 2001.<sup>1</sup> The Australian Medical Association supported these concerns.<sup>2</sup>

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<sup>1</sup> Ms Smith, Australian Consumers Association CA1, Dieticians Association of Australia, Submission 2 pg1, Public Health Association of Australia, Submission 5 pg1

<sup>2</sup> Australian Medical Association Ltd, Submission 6 pg1

While the Chair of the Committee attempted to rebut this evidence by listing the broad public consultation associated with the Food Regulation Review process (also known as the Blair Review), this response failed to address the fact that no formal consultation occurred in the 2 years after that draft report was submitted to COAG.<sup>3</sup>

The objective of the Food Regulation Review was to recommend to Government how to reduce the regulatory burden on the food sector and improve the clarity, certainty and efficiency of the current food regulatory arrangements whilst, at the same time, protecting public health and safety. The final draft report of the Review was released publicly in August 1998.

The Food Regulation Review final draft report was submitted to the Council Of Australian Governments (COAG) in the same year where a Senior Officers Working Group was tasked with developing an Inter Governmental Agreement (IGA) based on its recommendations. This IGA became the basis for the drafting of the ANZFA Amendment Bill 2001.

By the Department of Health and Aged Care's own admission, major changes to the structure of ANZFA, were not outlined in the Food Regulation Review.<sup>4</sup> Further, the Department has stated that in the years between the submission of the Food Regulation Review and the introduction of the ANZFA Amendment Bill 2001, there was no detailed or formal consultation process with the Australian public or public health/consumer groups.<sup>5</sup>

In a reference to the way in which the UK Government handled the BSE situation, the ACA described the lack of consultation process as:

“...herald[ing] a new era in poor consumer relations, creating a regulatory and public relations nightmare similar to the United Kingdom's MAFF regulatory system for food regulation...”<sup>6</sup>

The Australian Food and Grocery Council (AFGC) described Departmental consultation with its group during the years between the Food Regulation Review draft report and the introduction of the legislation as ‘fairly ad hoc; nothing terribly structured’. There were two specific consultations with Departments during that period at the instigation of the AFGC.<sup>7</sup>

These were described by Mr Hooke as:

“We got to the end of the Blair thing. With the enormous complexity of issues, I was comfortable with the part I played. I knew it was going off to the officials' group. When I had not heard where that was at, like any dutiful chief executive of an industry organisation I rang and asked ‘Where are we at?’ ‘Oh, the timing is great. We have just been working this through. We want to come and talk to you about where we are at.’ That was from a couple of departments, not just health. ‘If that’s

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<sup>3</sup> Sen Knowles, CA4

<sup>4</sup> Mr Borthwick, Department of Health and Aged Care CA29

<sup>5</sup> Mr Borthwick, DHAC CA29

<sup>6</sup> Ms Smith, ACA CA1

<sup>7</sup> Mr Hooke, AFGC CA19



heading off down the track, let us know if it starts running off the rails because we might like to be involved in a further response and consultation process.”<sup>8</sup>

This contrasts with the experience of the ACA and the PHAA, both of which were briefed rather than consulted about the proposed legislation in January 2001 just prior to its introduction into the Senate.<sup>9</sup> The DAA was not given a briefing.<sup>10</sup>

ANZFA itself was not part of the Senior Officers Working Group and was only consulted on two or ‘it may have been slightly more’ occasions during the development of the new food regulatory model.<sup>11</sup>

It is of interest to note that the two previous Committee hearings relating to ANZFA Amendment Bills – the *ANZFA Amendment Bill 1996*, the *ANZFA Amendment Bill 1997* (heard together) and the *ANZFA Amendment Bill 1999* - ANZFA was the only Government witness and gave detailed evidence on the legislative changes proposed. In contrast, at this hearing the Authority had subordinated itself to DHAC.<sup>12</sup> In addition ANZFA was not originally listed to attend the public hearing to provide evidence and its presence had to be specifically requested by the Opposition.

When asked about the consultation processes with consumer and public health organisations and peak organisations between the time the Food Regulation Review went to COAG and its introduction into Parliament, the Department stated:

“It is often not usual to get a report and for there to be a whole public consultation process on top of the public consultation process that went onto that report before the Prime Minister and the Premiers have taken a decision on that in the COAG context. In fact, I would venture, from my experience, that is typically the case. In other words, there is a report, a public inquiry process and negotiations between jurisdictions; they take a decision; and then it gets transcribed into legislation, and often then there is a detailed consultative process about the bits and pieces.”<sup>13</sup>

In the case of the ANZFA Amendment Bill 2001, in contrast to the Gene Technology Bill 2000 that went through two rounds of public consultation and a Senate References Committee process, there has been ‘no detailed consultative process about the bits and pieces’.

The lack of consultation extended to the Committee’s public hearing where there was considerable confusion generated during the Chair’s questioning of the first three witnesses in relation to consumer representation on the FSANZ Board.<sup>14</sup> The Department made it clear later in the hearing that this confusion arose because while the Government had been

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<sup>8</sup> Mr Hooke, AFGC CA19

<sup>9</sup> Ms Smith, ACA, Ms Laut, PHAA CA6

<sup>10</sup> Ms Cassidy, DAA CA6

<sup>11</sup> Mr Lindenmayer, Australia New Zealand Food Authority CA31

<sup>12</sup> Sen Forshaw, CA32

<sup>13</sup> Mr Borthwick, DHAC CA28

<sup>14</sup> Ms Smith, ACA CA4-5, Sen Knowles, CA4-5

consulted about a pending amendment to the legislation about consumer representation on the FSANZ Board, the first witnesses and the other members of the Committee had not.<sup>15</sup>

## **PROTECTION OF PUBLIC HEALTH AND SAFETY**

### ***Ministerial Council***

Changes to the Ministerial Council and the membership of the FSANZ Board and the introduction of the Precautionary Principle into the legislation were raised during the inquiry in the context of the ANZFA's overriding objective of protecting public health and safety.

It has been acknowledged that the changes to the composition of the Ministerial Council that allow its membership to be drawn from jurisdictional ministerial portfolios other than health are governed by the Inter Governmental Agreement. Amendments to the *ANZFA Amendment Bill 2001* are not an appropriate way of addressing these concerns.<sup>16</sup>

The concerns with the Ministerial Council composition are two-fold. Firstly, as was the case in UK's Phillips Report on BSE, there is a perception that including Ministers from the Agriculture and Trade portfolios on the Ministerial Council could lead to conflicts of interest in certain circumstances.<sup>17</sup> This in turn could put ANZFA's prime objective of protecting public health and safety at risk. As the ACA stated:

“...what this bill is proposing was in place during the outbreak of BSE. The Phillips report and subsequent government review have concluded that the best place for food regulation is actually in the department of health, and the food standards agency over there is completely independent from agriculture and trade now. It was established in April last year. That, I would say, would be the most persuasive evidence to show that what we are doing here is at least a decade out of step with overseas counterparts.”<sup>18</sup>

Secondly, while all jurisdictions (except Western Australian which is yet to announce its appointments) have put forward the Health Minister as the 'lead' Minister there is no guarantee that this would not change in the future. In fact, the Department has stated that it was a deliberate decision by the Prime Minister and Premiers not to designate Health Ministers as 'lead' Ministers in either the IGA or legislation.<sup>19</sup>

There is also concern that if the 'lead' Minister is not in attendance at a Ministerial Council meeting, decisions relating to public health and safety issues may be dealt with by other portfolio Ministers.<sup>20</sup>

The concerns raised about the change in membership of the Ministerial Council and its effect on potentially watering down ANZFA's prime objective of protecting public health and safety have been compounded by proposed changes to the composition and membership of the FSANZ Board.

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<sup>15</sup> Mr Corcoran, DHAC CA28

<sup>16</sup> Ms Smith, ACA CA2

<sup>17</sup> DAA, Submission 2 pg2

<sup>18</sup> Ms Smith, ACA CA8

<sup>19</sup> Mr Borthwick, DHAC CA26

<sup>20</sup> Ms Smith, ACA CA8

The Opposition Senators have significant concerns about changes to the representation on the Ministerial Council that should remain as a body of Health ministers.

### ***The FSANZ Board***

The Department itself has stated that under the current proposal there is in theory potential for at least half of the new Board to be made up of members with industry interests.<sup>21</sup>

The Opposition Senators strongly oppose such an outcome and will not support any restructuring of the Board that results in an increase in the representation of the industry groups that are regulated by FSANZ.

The DAA summed up some of the major concerns about this possibility:

“Industry should certainly be consulted and listened to when regulations within which it must operate are being constructed, but we believe strongly that industry should not be in a position to make the regulations with which they must comply. DAA believes that it is essential that the public health implications should take precedence over trade and agriculture in government decision making in this area.”<sup>22</sup>

There is broad agreement amongst all witnesses that the interests of public health and safety would be best served by a Board that is independently appointed and science/health-based. As Mr Hooke stated:

“At the end of the day, the consumers’ confidence and the community’s confidence...in the integrity of the regulatory processes is paramount. I do not know of any industry board that has creditability and integrity as its forerunner to what it does that would want to try and stack the board such that its integrity and its credibility could be diminished by virtue of it.”<sup>23</sup>

The Public Health Association of Australia highlighted the required expertise for the FSANZ Board to meet its primary objective of protecting the health and safety of the Australian public:

“Given that the priority functions of the Authority are, in relation to food, to protect public health and safety and to ensure appropriate information to consumers, the essential expertise that must be on the Board are public health, human nutrition, food science, food regulation and consumer rights...Expertise that is desirable but not essential would be that relating to the food industry including primary food production, food retailing and food processing. The profitability of the food industry is not the Board’s concern but food expertise is helpful in understanding the logistics of food handling and the role of the industry in adhering to food safety standards. It is therefore reasonable to have one member of the Board with food industry expertise.”<sup>24</sup>

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<sup>21</sup> Mr Borthwick, DHAC CA27

<sup>22</sup> Dr Stanton, DAA CA3

<sup>23</sup> Mr Hooke, AFGC CA17

<sup>24</sup> PHAA, Submission 5 pg6

The Food Anaphylactic Children Training and Support Association (FACTS) further underlined the major expertise requirements of the Board:

“FACTS asks that the Senate ensure that any amendment to the ANZFA Act will allow for:

- Scope for community consultation so that issues important to groups such as ours can be adequately addressed
- Provision for consumer representation on the Board being equivalent or greater than the current situation
- Representation of the fields of medical science, public health, food science, on the Board
- Provision to establish an expert panel on allergy matter where required
- The continued operation of our food regulatory body under the health portfolio
- Independence”<sup>25</sup>

One means of achieving independence and ensuring the predominance of science/ health expertise on the Board, put forward by the DAA, is to select membership of the FSANZ Board from nominations from key groups representing the necessary expertise and reduce the number of positions that can be held by food industry representatives.<sup>26</sup> This proposal, supported by the PHAA and ACA would also address the AFGC’s point about the need for a statutory authority that is not subject to the political will of the incumbent government.<sup>27</sup>

The DAA, the ACA and the PHAA also saw public health benefits in having a representative of the NHMRC on the Board.<sup>28</sup>

To ensure public confidence in the independence of the Board, the ACA and PHAA requested that provisions mandating disclosure of Board members’ direct and indirect pecuniary interests be maintained.<sup>29</sup> There remains a question mark over whether proposed amendments in the bill in fact strengthen or weaken these provisions.<sup>30</sup>

### ***Precautionary Principle***

The introduction of the Precautionary Principle into the proposed legislation was raised by the ACA as a means of further strengthening the role ANZFA plays in protecting public health and safety.<sup>31</sup> As the ACA states:

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<sup>25</sup> Food Anaphylactic Children Training and Support Association, Submission 4 pg 2

<sup>26</sup> Dr Stanton, DAA CA3

<sup>27</sup> Mr Hooke, AFGC CA17

<sup>28</sup> Dr Stanton, DAA CA7, Ms Smith, ACA CA7, PHAA, Submission 5 pg4

<sup>29</sup> ACA, Submission 8 pg11, PHAA, Submission 5 pg6

<sup>30</sup> Mr Borthwick, DHA CA26

<sup>31</sup> Ms Smith, ACA CA2

“I noted in my opening comments that this bill cannot change the COAG decision, so we need to ensure that public health and safety can be guaranteed as much as possible in this bill. One way of doing that is to ensure that the precautionary principle is included in section 10 of the bill, so that public health and safety is bolstered, if you like, and there is that extra objective there.”

The preferred form of wording by both the ACA and the DAA was that contained in the Gene Technology Act 2000.<sup>32</sup>

The AFGC, the Department and ANZFA, however see problems with the inclusion of the precautionary principle being used in the context of food regulation. The major concern identified by all groups is over which definition should or would be used and how it should or would be interpreted.<sup>33</sup>

Finally, concern was raised that in contrast with the current system, there was a move to restrict public notification of most information to the Internet only. This was seen by the ACA as inadequate.<sup>34</sup>

### **TIMING AND DRAFTING ERRORS**

In addition to the lack of public consultation on the ANZFA Amendment Bill 2001, there was concern about the way in which the legislation was being pushed through the Parliamentary process.

The legislation needs to be passed in time for signing of a treaty at the end of the winter session, that is the end of June. Despite this deadline, some five months after the bill's introduction into the Senate, it was originally listed for Second Reading Debate on 26 February 2001 – a period that would not have allowed for sufficient scrutiny of the legislation by opposition parties.

The process for this Senate Committee inquiry was similarly rushed with just 3.5 hours of public hearings on 29 March and a reporting date set for 3 April. This again has not allowed for reasonable scrutiny and consideration of the evidence put before the Committee.

As the ACA pointed out in its evidence:

“The lack or dearth of consultation in the ACA's case about the contents of the bill is compounded by the inadequate time line that the Senate now has to consider this bill. Due to inadequate consultation through the drafting process, Australian consumers have been made reliant on the Senate's consideration, assessment and necessary amendment of this bill to protect their health and safety. However, an inquiry with a reporting date less than three working days after a half-day public hearing is, in our opinion, inadequate to address consumer concerns.”<sup>35</sup>

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<sup>32</sup> Ms Smith, ACA CA10, Dr Stanton, DAA CA10

<sup>33</sup> Dr Annison, AFGC CA18, DHAC, Submission 11 pg6, Mr Lindenmayer, ANZFA CA25

<sup>34</sup> ACA, Submission 8 pg11

<sup>35</sup> Ms Smith, ACA CA2

In fact the speed with which the ANZFA Amendment Bill 2001 has been drafted and considered, and the results of that process together with the lack of consultation have resulted in a piece of flawed legislation, requiring at least two Government amendments to address drafting mistakes.

The first relates to the need to amend the bill to reinstate a consumer rights representative not only in the mandatory list for inclusion on the FSANZ Board, but also in the general list.<sup>36</sup>

The second relates to when the Ministerial Council can use its powers to amend all applications and proposals put to it by ANZFA. Under the current draft of the bill, this power is only available in consideration of Urgent applications or proposals. Amendments will be required to ensure that this power exists in consideration of all applications or proposals as the Department has stated it was originally intended.<sup>37</sup>

The identification of these major drafting errors together with the lack of opportunity for public scrutiny of the bill, answers the question posed by the AFGC during the hearings:

“...why the need for this committee to review this bill?”<sup>38</sup>

Senator Michael Forshaw  
(ALP, New South Wales)

Senator Kay Denman  
(ALP, Tasmania)

April 2001

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<sup>36</sup> Mr Corcoran, DHAC CA24

<sup>37</sup> Mr Borthwick, DHAC CA30-31

<sup>38</sup> Mr Hooke, AFGC CA16

**SUPPLEMENTARY REPORT**  
**AUSTRALIAN DEMOCRATS**  
**AUSTRALIA NEW ZEALAND FOOD AUTHORITY**  
**AMENDMENT BILL 2001**

**1. Introduction**

- 1.1 The Australia New Zealand Food Authority Amendment Bill 2001 amends the *Australia New Zealand Food Authority Act 1991* to implement arrangements for a new food regulation system agreed to be members of the Council of Australian Governments (COAG) on 3 November 2000.
- 1.2 The Government asserts the new system provided for in this Bill strengthens the focus on public health and safety.
- 1.3 The Australian Democrats acknowledge the Bill goes some way to addressing problems in the current regulatory environment identified in the Blair Review (1998)<sup>1</sup>.
- 1.4 However, the Democrats believe the Bill in its current form, is flawed and will seek to move appropriate amendments to better ensure the primacy of public health and safety in the new system.

**2. Representation On Board**

- 2.1. An issue raised in six submissions, and discussed at length at the public hearing, was the proposed representation of the FSANZ Board.
- 2.2. The Democrats note the concern expressed in a number of submissions and at the public hearing that the list of fields of expertise potentially allow an undesirable over-representation of commercial interests on the Board.
- 2.3. The Australian Democrats believe there is a good case for some food industry representation on the FSANZ Board and acknowledge it is unlikely that a Board would be completely 'stacked' with industry interests, however, the Democrats believe a good case was made for an increase in representation from medical science, public health and food science, including a representative from the National Health and Medical Research Council.
- 2.4. In addition, the Democrats are conscious of the very serious medical consequences and on-going stress arising from food anaphylaxis and note concerns raised in relation to novel foods.
- 2.5. Accordingly, the Democrats believe a number of (non-exclusive) options must be considered for committee stage of the Bill, including;
  - Increasing the size of the Board,

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<sup>1</sup> Food Regulation Review, August 1998

- Specifying additional fields of expertise in either or both the mandated and ‘other member’ components of the Board including, for instance, expertise in medical science and microbiology.
  - Limiting the number of members with commercial expertise,
  - Establishing two lists of fields of expertise – a) food industry and b) science and public health – and specifying minimum representation from both.
- 2.6. An additional issue discussed in a number of submissions and raised at the hearing was the process by which appointments will be made. Specifically, whether it was preferable for at least some of the Board members to be nominated by peak bodies as distinct from Ministerial appointment. In the case of, for instance, an NH&MRC representative, there is merit in allowing a process by which nominations are presented for Ministerial approval.
- 2.7. As the Democrats are committed to substantially improving the accountability and transparency of Ministerial appointments to public authorities, the processes for scrutiny of appointments to the FSANZ Board will need to be examined.
- 2.8. One problem that appears to have been addressed is the changes to 40(1)(d) mean a person with expertise in the area of consumer rights was deleted from the new 40(3). We note that in the course of the public hearing, the Department of Health and Aged Care acknowledged this was a drafting error and foreshadowed a government amendment to reinstate this position.

**Recommendation 1: That the ‘fields of expertise’ for board members be expanded and the size and structure of Board be revised to reflect the primacy of public health and safety in the new food regulatory system.**

### **3. Board Members’ Declaration of Interests**

- 3.1 The Australian Democrats are satisfied that the provisions of the CAC Act are broader than exists in the current ANZFA Act in respect of the onus on board members to declare material interests. There remains a question, however, as to whether ‘material interest’ does or does not include academic and research associations. Given the importance of public confidence in such science the Australian Democrats will seek further advice with a view to an additional amendment if required.

**Recommendation 2: That Board members are required to declare academic and research affiliation interests.**

### **4. Precautionary Principle.**

- 4.1 There was extensive discussion as to the distinctions and value of incorporating ‘precaution’, ‘precautionary approach’ or ‘the precautionary principle’ into the legislation.



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- 4.2 Evidence given to the committee by Mr Lindenmayer from ANZFA argued that ‘the term ‘precaution’ itself or ‘precautionary approach’ adequately describes the approach that is now in place”.<sup>2</sup>
- 4.3 The Democrats note the concerns that ‘the precautionary principle’ is ambiguous but are not convinced that WTO arguments deserve a place in consideration of a Bill concerned primarily with public health and safety.
- 4.4 Reference was made to ‘the precautionary principle’ being adopted in the Gene Technology Bill 2000. While arguments against a similar approach for this Bill had some merits, at the least, there appears to be no good reason why implicit notions of a ‘precautionary approach’ should not be made explicit in section 10.

**Recommendation 3: That at a minimum, the ‘precautionary principle’, as adopted in the Gene Technology Bill 2000, is incorporated into this Bill.**

### **5. Public Notification**

- 5.1 An issue raised by the Australian Consumers’ Association was the adequacy of notification processes.<sup>3</sup> The Democrats accept this point and will seek to amend the Bill so that FSANZ will be required to publicise ‘routine’ and ‘urgent’ applications in the printed media as well as on the Internet.

**Recommendation 4: That FSANZ is required to publicise all applications in printed media in addition to on the Internet.**

### **6. Public Consultation**

- 6.1 A point made by a number of submissions and discussed in some length was the lack of consultation with this Bill. The Australian Democrats do not concur with the view that the Blair Review processes were sufficiently consultative because this Bill is substantially different to that review’s recommendations.

### **7. Additional Comments**

- 7.1 The Democrats have some concerns at the perfunctory performance of the Government and the Department in its consultation with relevant groups.

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<sup>2</sup> Mr Ian Lindenmayer, Hansard, Canberra, 29 March 2001, p.

<sup>3</sup> Submission No. 8, Australian Consumers’ Association, s10.

- 7.2 A final tangential comment: At the public hearing, the rationale for a Senate Inquiry on this issue was queried by a witness.<sup>4</sup> As but one consequence of the hearing was the exposure of drafting problems and consequently, the Department foreshadowing the need for two government amendments, this reinforces the crucial role that Senate Inquiries play in the legislative and consultative process.

Senator Natasha Stott Despoja  
**Australian Democrats, South Australia**

April 2001

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<sup>4</sup> Mr Mitchell Hooke, Hansard, *op cit*, p.

# **APPENDIX 1**

## **AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001**

### **SUBMISSIONS RECEIVED BY THE COMMITTEE**

- 1 Australia New Zealand Food Authority (ANZFA)  
*Additional information*
  - response to submission by Goodman Fielder regarding an application under the Novel Foods Standard
  - Directors' duties under the Commonwealth Authorities and Companies Act
- 2 Dietitians Association of Australia
- 3 Australian Food and Grocery Council
- 4 FACTS (Food Anaphylactic Children Training and Support Association)
- 5 Public Health Association of Australia Inc
- 6 Australian Medical Association Limited (AMA)
- 7 Ms Rosemary Stanton
- 8 Australian Consumers' Association (ACA)
- 9 Ms Dorothy Francis
- 10 Goodman Fielder
- 11 Commonwealth Department of Health and Aged Care
- 12 Department of Agriculture, Fisheries and Forestry - Australia



## **APPENDIX 2**

### **PUBLIC HEARING**

A public hearing was held on the Bill on 29 March 2001 in Senate Committee Room 2S3.

#### **Committee Members in attendance**

Senator Sue Knowles (Chairman)  
Senator Denman  
Senator Michael Forshaw  
Senator Stott Despoja  
Senator Tchen

#### *Witnesses*

##### **Public Health Association of Australia**

Ms Pieta Laut, Executive Director

##### **Australian Consumers' Association**

Ms Rebecca Smith, Senior Food Policy Officer

##### **Dietitians Association of Australia**

Ms Sue Cassidy, Professional Services Dietitian  
Dr Rosemary Stanton, Member

##### **Australian Food and Grocery Council**

Mr Mitchell Hooke, Chief Executive  
Dr Geoffrey Annison, Scientific and Technical Director

##### **Department of Health and Aged Care**

Mr David Borthwick, Deputy Secretary  
Mr Brian Corcoran, First Assistant Secretary, Population Health Division  
Ms Carolyn Smith, Director, Food Policy, Population Health Division

##### **Australia New Zealand Food Authority (ANZFA)**

Mr Ian Lindenmayer, Managing Director  
Ms Claire Pontin, General Manager, Strategy & Operations

##### **Department of Agriculture, Fisheries and Forestry - Australia**

Ms Bev Clarke, Business Manager, Food Group



## **APPENDIX 3**

### **FOOD REGULATION AGREEMENT 2000**

#### **Food Regulation Agreement**

**AN AGREEMENT** made the third day of November, 2000 between:

The COMMONWEALTH OF AUSTRALIA ("the Commonwealth") and  
The STATE OF NEW SOUTH WALES;  
The STATE OF VICTORIA;  
The STATE OF WESTERN AUSTRALIA;  
The STATE OF QUEENSLAND;  
The STATE OF SOUTH AUSTRALIA;  
The STATE OF TASMANIA;  
The NORTHERN TERRITORY OF AUSTRALIA; and  
The AUSTRALIAN CAPITAL TERRITORY  
collectively called "the States and Territories".

#### **WHEREAS -**

A. The Commonwealth and the States and Territories agree that there is a need to implement a co-operative national system of food regulation with the following objectives:

- (a) providing safe food controls for the purpose of protecting public health and safety;
- (b) reducing the regulatory burden on the food sector;
- (c) facilitating the harmonisation of Australia's domestic and export food standards and their harmonisation with international food standards;
- (d) providing cost effective compliance and enforcement arrangements for industry, government and consumers;
- (e) providing a consistent regulatory approach across Australia through nationally agreed policy, standards and enforcement procedures;
- (f) recognising that responsibility for food safety encompasses all levels of government and a variety of portfolios; and
- (g) supporting the joint Australia and New Zealand efforts to harmonise food standards.

B. The Commonwealth and the States and Territories agree that there is a need to ensure that all sectors in the food supply chain manage their food safety risks but recognise that the mechanisms for ensuring that this happens will vary from sector to sector.

**IT IS AGREED THAT –****PART I - PURPOSE**

1. The purpose of this Agreement is to give effect to a national approach to food regulation within Australia.

**PART II - INTERPRETATION**

2. In this Agreement -

(a) 'COAG' means the Council of Australian Governments;

'Codex Alimentarius' means the code of international food standards set by the Codex Alimentarius Commission to guide and promote the elaboration and establishment of definitions and requirements for foods, to assist their harmonisation and, in doing so, to facilitate international trade;

'consistent' means that the wording of the jurisdiction's provision may differ, if necessary, from the provision in Annex A or Annex B to this Agreement. However, the provision must deal with the same subject matter, in a manner appropriate for the legal regime of the jurisdiction, and must have the same intent and effect as the particular provision being enacted;

'Consultative Council' means the Food Regulation Consultative Council, to be established pursuant to Part III of this Agreement;

'food legislation' means the laws regulating the packaging, labelling, sale, handling and distribution of food;

'FSANZ' means Food Standards Australia New Zealand, to be established pursuant to Part III of this Agreement;

'in the same terms' means that the same words must be used in the provision in the jurisdiction's Food Legislation as is used in the provision in Annex A to this Agreement, subject to the Parliamentary conventions of the jurisdiction;

'jurisdiction' means the Parties to this Agreement and the Government of New Zealand;

'lead Minister' means a Minister who is a member of the Ministerial Council and is nominated by each of the Parties to be responsible to the Ministerial Council for the responses of that Party, pursuant to Part III of the Agreement;

'Ministerial Council' means the Australia and New Zealand Food Regulation Ministerial Council, to be established pursuant to Part III of this Agreement;

'Party' means a party to this Agreement;

'proposed standard' includes a proposed variation to an existing standard;

'Standing Committee' means the Standing Committee of Senior Officials to the Ministerial Council, to be known as the Food Regulation Standing Committee and to be established pursuant to Part III of this Agreement;



- (b) a reference to a Part is a reference to a Part of this Agreement;
- (c) a reference to a clause is a reference to a clause of this Agreement;
- (d) words importing the singular include the plural and vice versa; and
- (e) words importing a gender include the other gender.

### **PART III - ADMINISTRATIVE ARRANGEMENTS**

#### **Australia and New Zealand Food Regulation Ministerial Council**

3. The Parties shall establish a Council, to be known as the Australia and New Zealand Food Regulation Ministerial Council, which will:

- (a) have responsibility for:
  - (i) the development of domestic food regulatory policy;
  - (ii) the development of policy guidelines for setting domestic food standards;
  - (iii) the promotion of harmonised food standards within Australia between the Parties (harmonisation of domestic standards between States and Territories and of domestic standards with export standards) and with Codex Alimentarius (harmonisation of domestic and export standards with international food standards set by Codex Alimentarius);
  - (iv) the general oversight of the implementation of domestic food regulation and standards; and
  - (v) the promotion of a consistent approach to the compliance with, and enforcement of, food standards;
- (b) consist of one or more members representing each Party, and the Government of New Zealand, who shall be the Minister for Health of each Party or Government and other Ministers nominated by that Party or Government with prime responsibility for matters with which this agreement is concerned;
- (c) be Chaired by the Minister with responsibility for the Commonwealth Health portfolio and supported by a Secretariat provided by that Minister's portfolio;
- (d) operate under the following arrangements:
  - (i) each Party, and the Government of New Zealand, shall have one vote on a proposed resolution of the Ministerial Council and this vote shall represent the views of all Ministers of the Party, or Government of New Zealand;
  - (ii) only a lead Minister shall have the right to vote on a resolution proposed by the Ministerial Council;
  - (iii) where none of the members representing a Party, or the Government of New Zealand, on the Ministerial Council is able to be present at a meeting at which a vote is to be taken, the lead Minister may advise the Chairperson of the Party's voting intentions in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting;
  - (iv) a vote under clause 3(d)(iii) will have the same effect as if the members representing a Party, were present and voting at the meeting;
  - (v) a decision of the Ministerial Council may be made without a meeting being convened and held;
  - (vi) a vote on a resolution, either at a meeting or out-of-session, will be carried by a simple

majority of all jurisdictions;

(vii) subject to this Agreement, the Ministerial Council may determine its own procedures and for that purpose make rules of procedure, including rules relating to notice of meeting, quorum and conduct of business at meetings, and may from time to time alter such rules; and  
(viii) the Ministerial Council shall hold a meeting at least once in each calendar year;

(e) request FSANZ to review a proposed standard or an existing standard if a Party considers that one or more of the following criteria applies to the standard:

- (i) it is not consistent with existing policy guidelines set by the Ministerial Council;
- (ii) it is not consistent with the objectives of the legislation which establishes FSANZ;
- (iii) it does not protect public health and safety;
- (iv) it does not promote consistency between domestic and international food standards where these are at variance;
- (v) it does not provide adequate information to enable informed choice;
- (vi) it is difficult to enforce or comply with in both practical or resource terms;
- (vii) it places an unreasonable cost burden on industry or consumers;

(f) request FSANZ, subsequent to a review undertaken under clause 3(e), to review a proposed standard a second time if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) applies to the standard;

(g) have the power to reject a proposed standard that has been reviewed a second time under clause 3(f) if it is agreed, by a majority vote, that one or more of the criteria in clause 3(e) still applies to the standard, provided the Ministerial Council publicly announces its reasons for doing so.

4. (a) Where FSANZ notifies the Ministerial Council of a proposed standard developed by FSANZ, other than a proposed standard resulting from a review of a proposed standard or an existing standard under clauses 3(e) or 3(f), FSANZ shall proceed to publish the proposed standard as notified to the Ministerial Council in the Commonwealth of Australia Gazette if the Ministerial Council does not request a review of the proposed standard under clause 3(e) within 60 days of being notified of the proposed standard by FSANZ.

(b) Where FSANZ notifies the Ministerial Council of a proposed standard resulting from a review of a proposed standard or an existing standard following a request under clauses 3(e) or 3(f), FSANZ shall proceed to publish the proposed standard as notified to the Ministerial Council in the Commonwealth of Australia Gazette if and when FSANZ is notified by the Ministerial Council that the Ministerial Council does not intend to request a second review of the proposed standard under clause 3(f) or to reject the proposed standard under clause 3(g).

(c) FSANZ shall not publish a proposed standard in the Commonwealth of Australia Gazette other than in accordance with clauses 4(a) or 4(b).

5. The Parties shall invite the President of the Australian Local Government Association, or his delegate, to participate in the activities of the Council as an observer.

### **Food Regulation Standing Committee**

6. When establishing the Ministerial Council, the Parties shall also establish a Standing Committee of Senior Officials, to be known as the Food Regulation Standing Committee:

(a) with the functions of:

- (i) co-ordinating policy advice to the Ministerial Council; and
- (ii) ensuring a nationally consistent approach to the implementation and enforcement of food standards;

(b) with its membership reflecting the Ministerial Council membership;

(c) which shall be chaired by the Secretary of the Department for which the Chairperson of the Ministerial Council has portfolio responsibility; and

(d) which is supported by the Ministerial Council secretariat.

7. The Parties shall invite the Australian Local Government Association to be a full participating member of the Standing Committee.

### **Food Standards Australia New Zealand**

8. The Commonwealth shall establish a statutory authority, to be known as 'Food Standards Australia New Zealand':

(a) with functions including:

- (i) developing proposed domestic food standards in accordance with the policy guidelines set down by the Ministerial Council;
- (ii) notifying the Ministerial Council of proposed standards developed by FSANZ;
- (iii) reviewing proposed standards or existing standards at the request of the Ministerial Council under clauses 3(e) or 3(f); and
- (iv) notifying the Ministerial Council of the outcomes of reviews of proposed standards or existing standards following a request by the Ministerial Council under clauses 3(e) or 3(f).

(b) managed by a Board of no more than ten members including:

- (i) a Chairperson
- (ii) such other members as are appointed in accordance with clause 10, including two members from New Zealand; and
- (iii) the Chief Executive Officer of FSANZ, appointed by the Board.

9. The Commonwealth, through the Minister responsible for the Commonwealth Health portfolio, shall appoint the members of the Board, referred to in clause 8(b)(i) and 8(b)(ii), after consultation with, and with the agreement of, members of the Ministerial Council, and shall only appoint a person to be a member of the Board if the person is suitably qualified for appointment because of expertise in one or more of the following areas:

- (a) public health;
- (b) food science;
- (c) human nutrition;
- (d) government;
- (e) administration of food law;
- (f) consumer issues;
- (g) the food industry;
- (h) food processing or retailing;
- (i) primary food production;
- (j) small business; and
- (k) trade.

10. In making these appointments, the Health Minister will seek to ensure that there is an appropriate balance of skills covering the above areas of expertise.

### **Food Regulation Consultative Council**

11. The Ministerial Council must establish, within 12 months of the first meeting of the Ministerial Council:

- (a) a Food Regulation Consultative Council in accordance with clause 12; or
- (b) an alternative means of consultation to provide stakeholder advice to the Ministerial Council, the Standing Committee, and FSANZ, if that alternative is agreed to by all the Parties.

12. If it is to be established by the Ministerial Council, the Food Regulation Consultative Council shall:

- (a) have the functions of:
  - (i) providing advice to the Ministerial Council and Standing Committee regarding the development of domestic food regulation policy;
  - (ii) providing advice to the Ministerial Council and Standing Committee regarding the development of policy guidelines for the setting of domestic food standards;
  - (iii) providing advice to FSANZ on the setting of domestic food standards; and
  - (iv) providing advice to the Ministerial Council, Standing Committee and FSANZ on appropriate strategies for FSANZ to conduct consultation with their stakeholders; and
- (b) comprise an independent and eminent person as Chairperson and a high level representative from organisations representing each of the following interests:
  - (i) Primary production;
  - (ii) Processed food;
  - (iii) Food retail;
  - (iv) Food service;
  - (v) Consumers;
  - (vi) Public health professionals;
  - (vii) Small business.

## **PART IV - INTRODUCTION AND AMENDMENT OF FOOD LEGISLATION AND ADOPTION OF FOOD STANDARDS**

### **Introduction of Food Acts**

13. The States and Territories will use their best endeavours to submit to their respective Parliaments, within twelve months of the date of signing this Agreement, and in accordance with clause 14, legislation which gives effect to the provisions listed at Annex A and Annex B of this Agreement which provide for the effective and consistent administration and enforcement of the Food Standards Code (including the Food Safety Standards).

14. The legislation submitted by each State and Territory to its respective Parliament:

- (a) will contain provisions that are either
  - (i) in the same terms as all of those contained in Annex A of this Agreement, noting that the words in square brackets are optional; or
  - (ii) if the State or Territory has separate legislation governing safe primary food production, consistent with all of those contained in Annex A of this Agreement noting that the words in square brackets are optional;

(b) may contain whichever provisions it chooses to include from those contained in Annex B of this Agreement. These provisions are administrative in nature and, because of the differing administrative or enforcement arrangements of particular jurisdictions, do not need to be adopted in the same terms by the States and Territories but, rather, can be adopted in a manner consistent with the relevant provision in Annex B; and

(c) may contain additional provisions that do not conflict with any of the provisions enacted pursuant to clause 14(a) or 14(b).

15. Where a State or Territory prescribes a food production activity for the purposes of the definition of "primary food production" in Annex A of this Agreement, it will advise the Ministerial Council of its intentions in order to promote national consistency.

16. States and Territories shall set penalties, whether by dollar amounts or by penalty units, for offences in the legislation submitted in accordance with clause 14 that are the same as, or as close as possible to (recognising the limits imposed by that jurisdiction's general penalty provisions scheme), the penalties for offences that are contained in Annex A of this Agreement and the penalties for offences that have been included from Annex B.

17. Each State and Territory will use its best endeavours to secure the passage and commencement of the legislation referred to in clause 14 within the Parliamentary session following introduction.

#### **Amendment of the Annexes**

18. Where a Party considers that Annex A or the intent of any of the provisions of Annex B should be amended, that jurisdiction will recommend its proposed amendments to the Ministerial Council.

19. Where the Ministerial Council agrees, by a majority vote, to a recommendation under clause 18, it will refer the proposed amendments to the Parliamentary Counsels' Committee for drafting.

20. Where the Ministerial Council does not agree, by a majority vote, with the proposed amendment, the amendment will not be made.

21. A State or Territory may introduce into Parliament, a Bill to amend its Act if it is necessary to do so as a matter of urgency in order to ensure continuous and effective administration or enforcement of its Act. The State or Territory must immediately report any such Bill introduced to the Ministerial Council. The Ministerial Council, at its next meeting, will consider any inconsistencies between the introduced Bill and the Annex A provisions and may agree, by majority vote, to include appropriate amendments to the relevant Annex of this Agreement in order to maintain national consistency.

22. After amendment of an Annex under clause 19, States and Territories will use their best endeavours to submit to their respective Parliaments in accordance with clause 14, legislation which gives effect to the amendment.

#### **Adoption of Food Standards**

23. The States and Territories will take such legislative or other steps as are necessary to adopt or incorporate as food standards in force under the food legislation of the State or Territory, the food standards (including variations to those standards) that are from time to time:

(a) developed by FSANZ; and

(b) published in the Commonwealth of Australia Gazette.

24. Such standards are to take effect on the date specified in the Gazette.

25. Subject to clause 28, no State or Territory shall, subsequent to the steps taken pursuant to clause 23, amend the food standards referred to in that clause.

26. No State or Territory shall, by legislation or other means, establish or amend a food standard other than in accordance with this Agreement.

27. It is hereby agreed that a food standard, developed by FSANZ and published in the Commonwealth of Australia Gazette, may include a provision in respect of a State or Territory or part of a State or Territory where the Ministerial Council is satisfied that the provision is necessary because of exceptional conditions in that State or Territory and that the provision would not present a risk to public health or safety or contravene Australia's international treaty obligations.

28. Where a State or Territory determines that an issue affecting public health and safety requires a new food standard, or variation of a standard adopted pursuant to clause 23, and that the circumstances affecting public health and safety would not allow time for the steps pursuant to clause 23 to be taken, the State or Territory may, under the food legislation of the State or Territory, adopt or vary a food standard accordingly, provided that:

(a) the State or Territory notifies FSANZ of its intention to adopt or vary the food standard;

(b) the new or varied food standard applies for a period of no longer than twelve months from the date of its adoption or variation; and

(c) the State or Territory makes, on so determining, an immediate application to FSANZ to adopt the new food standard or to vary the relevant food standard.

29. An application to FSANZ pursuant to clause 28(c) shall be decided within six months of the application being made.

30. Where a State or Territory determines that requirements relating to mandatory food safety programs are necessary in that State or Territory, the State or Territory may amend its food legislation to require mandatory food safety programs.

31. To promote national consistency, the States and Territories will work towards a best practice model for food safety programs.

#### **PART V - COMMENCEMENT OF THIS AGREEMENT**

32. The Parties acknowledge and agree that this Agreement cannot be given full effect unless and until:

(a) an agreement is entered into between the Government of the Commonwealth of Australia and the Government of New Zealand which either amends or takes the place of the agreement between those Governments made on 5 December 1995 establishing a system for the development of joint food standards; and

(b) Commonwealth legislation amending or replacing the *Australia New Zealand Food Authority Act 1999* comes into force, to give effect to the provisions of this Agreement.

33. Until the agreement between Australia and New Zealand and the Commonwealth legislation referred to in clause 32 comes into force, the Parties shall implement this Agreement in the following way:

(a) a reference to FSANZ in clauses 23, 27, 28 and 29 of this Agreement shall be taken to be a reference to the Australia New Zealand Food Authority; and

(b) the Ministerial Council shall be known as the Australia New Zealand Food Standards Council and, in addition to the responsibilities included in clause 3(a), will undertake the functions of the Australia New Zealand Food Standards Council set out in the *Australia New Zealand Food Authority Act 1991* ;

(c) the standards referred to in clause 23(a) will be recommended by the Australia New Zealand Food Authority to the Ministerial Council and adopted by the Ministerial Council in accordance with the functions of the Australia New Zealand Food Authority and the Australia New Zealand Food Standards Council set out in the *Australia New Zealand Food Authority Act 1991*; and

(d) clauses 3 (e), (f) and (g), 4, 9, and 10 will not come into effect.

34. (a) The Agreement between the Commonwealth of Australia, the States, the Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards made on 30 July 1991 shall cease to operate upon this Agreement being given full effect.

(b) Prior to this Agreement being given full effect, those provisions of this Agreement which come into effect in accordance with this Part V shall override any provisions of the Agreement between the Commonwealth of Australia, the States, the Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards made on 30 July 1991 which deal with the same subject matter as those provisions of this Agreement.

## **PART VI -REVIEW OF IMPLEMENTATION AND EFFECTIVENESS**

35. The Parties, in establishing the Ministerial Council and Standing Committee, shall require them to report annually to COAG on the progress towards the implementation of the co-operative system set down in this Agreement and its effectiveness.

36. The Parties shall jointly conduct and conclude a review of the effectiveness of this Agreement no later than five years after the commencement of the Agreement.

## **PART VII - AMENDMENT OR VARIATION OF AGREEMENT**

37. Where a Party considers that this Agreement should be amended, it may request consultations with the other Parties to this end, except in respect of amendments to Annexes A and B which may only be amended in accordance with clauses 18 to 22.

38. Amendments to this Agreement, other than amendments to Annex A or B, may only be made with the written consent of all Parties.

39. Any agreed amendments to the Agreement shall be contained in a document distributed to all Parties and which shall include a reference to the date on which the amendment shall come into force.

### **PART VIII - DISPUTE RESOLUTION**

40. Where a dispute arises under this Agreement:

(a) the Parties shall require the members of the Ministerial Council to attempt to resolve the disputes in the first instance;

(b) if this fails, the Parties may refer the dispute to COAG to seek a resolution to the dispute through COAG processes.

### **PART IX - WITHDRAWAL AND TERMINATION**

41. Any Party may withdraw from this Agreement provided it gives not less than 12 months notice in writing to each of the other Parties.

42. Withdrawal from the Agreement by any Party shall result in the Agreement being terminated.

43. Upon receiving notice from a Party that they wish to withdraw from the Agreement, the Commonwealth shall notify the Government of New Zealand to this effect.

IN WITNESS WHEREOF this Agreement has been executed as at the day and year first written above.

SIGNED by:

The Honourable John Winston Howard MP  
(Prime Minister of the Commonwealth of Australia)

The Honourable Robert John Carr MP  
(Premier of the State of New South Wales)

The Honourable Stephen Phillip Bracks MP  
(Premier of the State of Victoria)

The Honourable Peter Douglas Beattie MLA  
(Premier of the State of Queensland)

The Honourable Richard Fairfax Court MLA  
(Premier of the State of Western Australia)

The Honourable John Wayne Olsen MP  
(Premier of the State of South Australia)

Mr Jim Bacon MHA  
(Premier of the State of Tasmania)

Mr Gary John Joseph Humphries MLA  
(Chief Minister of the Australian Capital Territory)

The Honourable Denis Burke MLA  
(Chief Minister of the Northern Territory of Australia)

Councillor John Ross  
(President of the Australian Local Government Association)