



Additional comments on the FSANZ Amendment Bill 2007

At the request of the Senate Community Affairs Committee, CHOICE provides these comments on the Food Standards Australia New Zealand Amendment Bill 2007 in addition to the submission provided on 13 April 2007.

1. CHOICE supports an amendment to insert additional paragraph into subsection 7(1) to formalise the role of FSANZ to provide general advice on the Australian New Zealand Food Standards Code.
2. CHOICE supports the proposed amendments to update the 'exemption from suit' provisions to ensure that FSANZ is able to carry out any of its functions in good faith without risking legal action provided that this is in accordance with the FSANZ Act.
3. CHOICE supports amendments to better align the APVMA and FSANZ processes in relation to Maximum Residue Limits.
4. CHOICE supports the amendments to the 'stop the clock' provisions to ensure that FSANZ is not obliged to continue with an application of proposal while relevant policy guidelines are being developed. It is logical that FSANZ suspends work until the policy guideline is complete.
5. CHOICE recommends further amendments to clarify what it is that the public is being invited to make submission on in Step 6 of the proposed process. Currently, FSANZ must produce an initial assessment report for the first stage of public consultation. CHOICE recommends that FSANZ should be required to provide a minimum level of information for this first round of consultation. This could take the form of an initial assessment report or a discussion paper. This report or paper should:
 - include specific details on the nature of the application/proposal;
 - set out the nature of the problem/situation that the application/proposal is intended to address;
 - provide information on any research or material that is provided in support of the application;
 - briefly outline the reasons behind the decision to proceed with the application/proposal;
 - report on aspects and implications of the application/proposal that have already been identified by FSANZ; and
 - specify areas where FSANZ seeks further stakeholder input.

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6. CHOICE recommends that the proposed amendments to the FSANZ Act should also include a definition or further clarification of what applications or proposals would be considered to be a “major variation”, such a “significant change” or involve such “scientific or technical complexity” that they would require the full assessment and consultation processes. This would be consistent with the information provided in Section 36 of Subdivision E which outlines what is considered to be a “minor variation”.
7. CHOICE does not support the proposed amendment to the urgency provision to consider urgent applications and proposals to address unintended negative impacts on trade, as it elevates trade interests to a similar level as public health and safety which is inconsistent with the Section 10 objectives of the FSANZ Act. Instead CHOICE recommends that other mechanisms for limiting unintended negative impacts on trade be explored.
8. For example, if a new technology was developed to more accurately test the levels of vitamins and minerals added to foods some products that were found to contain sufficient levels of vitamins and minerals under older testing methodology may be found to contain insufficient amounts using the new technology. Rather than applying urgency provisions to amend the standard (without public consultation) to prevent regulatory action against the manufacturer of the product with insufficient vitamins and minerals, the FSANZ Act could grant the manufacturer exemption from regulatory action for a short period in order for them to change recipes or adjust processes etc.
9. CHOICE does not support the proposed amendments relating to the high level health claims which remove all requirements for public consultation in order to protect commercially valuable information. Because health claims may have a significant impact on public health and safety as well as consumer information CHOICE believes they should be subject to the full assessment and consultation process. Removing all public consultation in favour of expert committees, excludes many key stakeholders from participating in consultation. This is inconsistent with the three primary objectives of the FSANZ Act which relate to the protection of public health and safety, the provision of consumer information and the prevention of misleading and deceptive conduct.
10. In the event that the proposed amendments to procedures for varying standards on nutrition health and related claims are accepted, CHOICE recommended changes to the wording proposed in Section 50.

CHOICE recommends that the following text should appear after the opening sentence.

The Authority must be satisfied that the variation is consistent with the primary objectives of the FSANZ Act, which are:

- *The protection of public* health and safety;*
- *The provision of adequate information relating to food to enable consumers to make informed choices*
- *The prevention of misleading and deceptive** conduct.*

The Authority must also be satisfied that the variation is consistent with the criteria set out in the Nutrition, Health and Related Claims Standard in relation to high level health claims.



- * The word “public” was missing from the first bullet point under Section 50 of the proposed amendments.
 - ** The words “and deceptive” were missing from the third bullet point under Section 50 of the proposed amendments.
11. CHOICE does not support any proposal to limit the capacity of the Ministerial Council to request a second review. Instead, we recommend that amendments specify the conditions under which the Ministerial Council can request a second review and set out the requirement for FSANZ to consult directly with the jurisdictions when a first or second review is requested.