

OPERATING PROCEDURES

FOR THE

**LEGISLATIVE AND GOVERNANCE FORUM ON
FOOD REGULATION**

***Incorporating Operating Procedures for the
Food Regulation Standing Committee and the
Food Regulation Secretariat***

**Endorsed by the Legislative and Governance Forum on Food Regulation on:
7 December 2012**

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1: THE FOOD REGULATION SYSTEM OVERVIEW

1.1 Context

The food regulation system is a cooperative bi-national arrangement involving the Australian Government, states and territories and New Zealand. Food regulation in Australia involves all three levels of government. One of the most important features of the food regulatory system is the separation of policy decision making from the development of food standards.

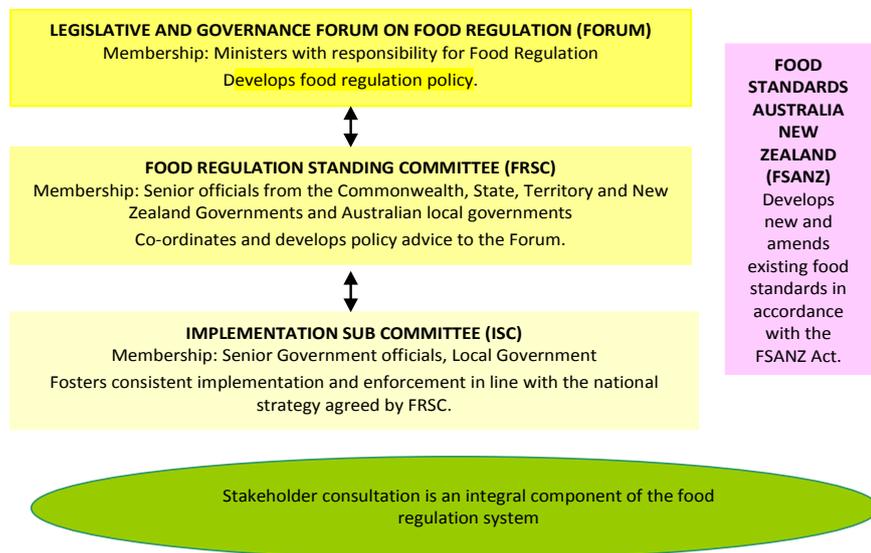
The system is established through an intergovernmental agreement with the States and Territories (Food Regulation Agreement) and a Treaty between Australia and New Zealand (The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System).

The governance structures within the Food Regulation System are:

- the Legislative and Governance Forum on Food Regulation (the Forum);
- the Food Regulation Standing Committee (FRSC);
- an Implementation Sub-Committee (ISC);
- a Food Regulation Secretariat that supports the Forum, FRSC and ISC; and
- Food Standards Australia New Zealand (FSANZ);

The Food Standards Australia New Zealand Act 1991 (the Act) established Food Standards Australia New Zealand (FSANZ). FSANZ is an independent statutory authority with responsibility for developing food standards that protect public health and safety, provide adequate information and prevent misleading conduct. In developing standards FSANZ must consider: the best available scientific evidence, consistency with international standards, the desirability of an efficient and internationally competitive food industry; the promotion of fair trade and policy guidelines set by the Forum. The Board of FSANZ approves all food standards.

Stakeholder consultation is an integral component of the food regulation system, and a number of processes have been established to ensure stakeholders are consulted at the various stages of policy and standards development.



1.2 Food Regulation Agreement (FRA)

The Food Regulation Agreement (FRA), including the Model Food Provisions contained in Annex A and Annex B, was signed by the Council of Australian Governments (COAG) in November 2000¹, and gave effect to a commitment by Commonwealth, State and Territory governments to a national approach to food regulation within Australia. The objectives of the system as set out in the FRA are:

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

The Commonwealth and the State and Territory 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.

1.3 The Food Treaty

The food regulatory system is strengthened through the partnership between Australia and New Zealand in the development of joint food standards. Although not a signatory to the FRA establishing the new system, New Zealand has joined the Australian System and has an integral involvement in the current food standards setting and policy development processes.

In 1995², the Governments of Australia and New Zealand formalised the Joint Food Standards System via the Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty).

The Food Treaty seeks to reduce unnecessary barriers to trade, to adopt a joint system of food standards, to provide for timely development, adoption and review of food standards and to facilitate sharing of information.

¹ The FRA has been amended several times since 2000.

² The Treaty was reviewed between January 2006 and October 2007. An amended Treaty was brought into force on 6 July 2010.

2: LEGISLATIVE AND GOVERNANCE FORUM ON FOOD REGULATION

The food regulation system is overseen by the Legislative and Governance Forum on Food Regulation (the Forum) (convening³ as the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council)).

The Forum has responsibility for developing domestic food regulation policy, developing policy guidelines for setting domestic food standards, and the promotion of a consistent approach to compliance with, and enforcement of, food standards. The Forum also has the capacity to adopt, amend or reject food standards and to request that these be reviewed. The Forum also has a statutory decision-making function under the Trans-Tasman Mutual Recognition Arrangement (TTMRA), a non-treaty agreement between the Australian Government, State and Territory Governments and the Government of New Zealand to implement mutual recognition principles relating to the sale of goods and registration of occupations. The arrangement incorporates a Temporary Exemption mechanism giving particular jurisdictions the right to ban unilaterally, for 12 months, the sale of goods in their jurisdiction for health and safety reasons. Before such an Exemption expires, the relevant Council (in the case of food, the Forum) must determine whether a particular standard should apply to the good.

The Forum is supported by the Food Regulation Standing Committee (FRSC) which is responsible for coordinating and developing policy advice to the Forum and ensuring a nationally consistent approach to the implementation and enforcement of food standards.

FRSC has established the Implementation Sub-Committee (ISC), which oversees a consistent approach to implementation and enforcement of food regulations and standards.

2.1 Terms of reference

The Terms of Reference for the Forum, issued by the Council of Australian Governments (COAG) in September 2011, are provided as an Appendix.

2.2 Chair

The Chair of the Forum is the Member who represents the Commonwealth with responsibility for health matters. A Deputy Chair may be appointed in the temporary absence of the Chair during a meeting, as decided by the Chair.

The Forum is to be supported by a Secretariat provided by the Chair's portfolio. The responsibilities of the Food Regulation Secretariat (the Secretariat) are described in Section 4.

2.3 Membership

Under the FRA, the Forum comprises one Minister or more representing each jurisdiction, being the Minister for Health of each Government and other Ministers nominated by that Government with prime responsibility for matters with which the FRA is concerned. Other Ministers may also participate, where nominated by their jurisdictions, where those Ministers have a responsibility for food matters.

The current Membership was confirmed by COAG as part of the Terms of Reference. Each jurisdiction has nominated a Lead Member. The Lead Member must represent a whole-of-jurisdiction view.

³ In September 2011, COAG implemented a new Council System. The Ministerial Council was replaced by the Forum, except in cases where it is referred to by name in instruments such as legislation, treaties and intergovernmental agreements. COAG has asked the Councils to amend references to the new Council System by 30 June 2016. In the interim, where decisions must be made or responsibilities exercised under legislation, treaties or intergovernmental agreements, the Forum must convene as the Australia and New Zealand Food Regulation Ministerial Council.

The Australian Local Government Association, or delegate, and the Chairperson and Chief Executive Officer of FSANZ are also invited to attend Forum meetings as observers.

2.4 Conflict of interest

Members and supporting staff have a responsibility to disclose and take reasonable steps to avoid any conflict of interest, real or apparent in connection with their membership or support of the Forum or its subordinate bodies.

2.5 Role and responsibilities

2.5.1 Legislative instruments

The Forum has responsibilities under the following instruments:

- *Food Standards Australia New Zealand Act 1991*
- Food Regulation Agreement 2000 (and Annexes A and B)
- Intergovernmental Agreement on Food Reforms 2010
- Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System (the Treaty) 2011
- Australia New Zealand Closer Economic Relations Free Trade Agreement 1983
- Trans Tasman Mutual Recognition Arrangement 1998

2.5.2 Roles and responsibilities

Under the FRA and Food Treaty, the Forum (convening as the Ministerial Council) is responsible for:

- the development of domestic food regulatory policy having regard to the COAG-endorsed Best Practice Regulation - A Guide for Ministerial Councils and National Standards Setting Bodies;
- the development of policy guidelines for setting domestic food standards for Australia and New Zealand;
- the promotion of harmonised food standards within Australia between the Parties to the FRA (harmonisation of domestic standards between States and Territories and of domestic standards with export standards) and with New Zealand under the Food Treaty, and consistency with Codex Alimentarius (consistency of domestic and export standards with international food standards set by Codex Alimentarius);
- the general oversight of the implementation of domestic food regulations and standards; and
- the promotion of a consistent approach to the compliance with, and enforcement of, food standards.

2.6 Costs

As a general principle, costs related to Forum and FRSC activities will be shared by the Commonwealth, States, Territories and New Zealand in an agreed ratio related to a particular initiative.

Resources required for a special project or strategy agreed to by the Forum and FRSC shall be on a cost-shared basis as formulated for the Australian Health Ministers Advisory Council (AHMAC) cost share formula, unless otherwise decided by the FRSC. This formula applies to project work only and will be negotiated among the parties on a case-by-case basis and is reviewed yearly.

Individual jurisdictions meet the cost of their participation in the Forum and FRSC.

2.7 Meeting arrangements

2.7.1 Frequency and timing of meetings

The number of Forum meetings required per year will be determined by the business load to be managed; however the Forum shall hold a meeting at least once in each calendar year (FRA 3 (d) (viii)).

Where possible items that are:

- of strategic significance should be discussed at a face to face meeting
- of a technical or administrative nature, should be considered out-of-session by the Forum.

Face-to-face meetings are to be set at least six months in advance. Dates are to be determined around the availability of the Chair.

Forum meetings will be held a minimum of five weeks after FRSC meetings.

2.7.2 Teleconferences

In addition, where a teleconference of the Forum is required to be held:

- the Secretariat will book the teleconference to include all members, FSANZ and other appropriate parties at the time agreed;
- the Secretariat will circulate agenda papers or other information pertaining to the teleconference as soon as they are received by the Secretariat; and
- Prepare and distribute minutes of the teleconference using the same timeframe as for the face-to-face meetings where feasible.

Wherever possible, agenda items that are of a technical nature, such as standards notified by FSANZ, should be considered out-of-session by the Forum, rather than at a teleconference.

2.7.3 Meetings costs

The Commonwealth hosts face-to-face Forum meetings and is responsible for all the costs of the meeting including the venue, equipment and catering etc however not the accommodation and travel.

2.7.4 Quorum

A quorum for the purposes of the Forum meetings shall be consistent with the majority required for a decision, that is, a simple majority (equivalent to six members).

2.7.5 Proxies

If a Forum Member, including the Chair, is unable to attend a meeting, they may nominate a delegate to attend on their behalf. Further details are provided under Clause 3 (d) of the FRA. A template for appointing a proxy is available from the Secretariat.

2.8 Meeting agendas and agenda papers

2.8.1 Setting the agenda for face-to-face meetings

Agendas should focus on items of strategic national significance.

Where a Minister personally nominates an agenda item for the Forum's consideration, that Minister will be responsible for arranging with his agency to draft and submit the agenda paper to the Secretariat for circulation to Forum members.

Two months before the next Forum meeting, the Secretariat will forward a draft agenda to the members of the Forum, members of FRSC, the Chairs of subordinate bodies and to relevant agencies, including FSANZ, and will also seek their nominations for items to include on the agenda.

The Chair of FRSC will clear the Agenda on behalf of FRSC prior to it being forwarded to Forum members.

The Chair of the Forum determines the final agenda for the meeting.

2.8.2 Late agenda items

If additional items are proposed for discussion after the agenda is finalised, the Chair will seek the views of jurisdictions prior to the inclusion of any proposed additional items.

These additional items may be included formally on the meeting agenda only if they are unable to be handled out-of-session and only following the agreement of a majority of members. No individual jurisdiction will have the power of veto.

2.8.3 Submission and dispatch of agenda papers

Submissions and agenda papers for consideration by the Forum are to be lodged with the Secretariat at least 25 working days prior to the meeting.

Where possible and applicable, agenda papers for Forum meetings should be based on the paper approved by FRSC.

An agenda paper template is to be used when preparing papers for the meeting. The template is available from the Secretariat.

The agenda and accompanying papers will be dispatched by the Secretariat to Members and Primary Contacts 20 working days prior to the scheduled meeting. Members are to provide any comments on these agenda papers within five full working days, before the agenda papers are considered final.

Electronic dispatch is the preferred mode of transmission for all papers.

2.8.4 Late agenda papers

Any paper received late will only be accepted at the discretion of the Chair of the Forum and will be regarded as a low priority on the agenda, unless the Chair considers it otherwise.

If accepted, late papers will be sent out in batches when received by the Secretariat.

2.9 Decision-making

The Forum will seek to operate by consensus. However, on issues where consensus is not possible it may be necessary to vote. Each jurisdiction has one vote on the Forum. Lead Ministers for each jurisdiction must represent a whole of jurisdiction view. If voting is used, a simple majority carries the decision.

A decision of the Forum may be made without a meeting being convened and held.

Clauses 3(d-i) of the FRA outlines the arrangements for voting on resolutions by the Forum.

2.9.1 Policy and guideline decision-making

Clauses 3(a)(i) and 3(a)(ii) of the FRA charge the Forum with responsibility for the development of domestic food regulatory policy and for the development of policy guidelines for setting domestic food standards.

FRSC is responsible for providing advice to the Forum in undertaking its policy development role.

All member jurisdictions will be able to initiate new policy proposals and/or have the opportunity to be involved in the development of all policy proposals at an early stage and throughout the process.

2.9.2 Food standards decision-making processes

Food standards are developed and approved by Food Standards Australia New Zealand (FSANZ).

Clause 3 and 4 of the FRA outline the process and procedures for decision making on Food Standards.

2.9.3 Trans-Tasman Mutual Recognition Arrangement (TTMRA) decision-making

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is a non-treaty agreement between the Australian Government, State and Territory Governments and the Government of New Zealand, under the Trans-Tasman Mutual Recognition Act 1997.

In 1996 the Commonwealth, States and Territories and New Zealand signed the Arrangement establishing the TTMRA. The TTMRA entered into force on 1 May 1998.

The purpose of the TTMRA is to implement mutual recognition principles relating to the sale of goods and the registration of occupations. These principles, with a few exceptions, state that:

- a good that may be legally sold in Australia may be sold in New Zealand, and a good that may be legally sold in New Zealand may be sold in Australia. This is regardless of differences in standards or other sale-related regulatory requirements between Australia and New Zealand; and
- a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and vice versa, without the need for further testing or examination.

The Arrangement incorporates a Temporary Exemption mechanism giving participating jurisdictions the right to ban unilaterally, for 12 months, the sale of goods in their jurisdiction for health and safety reasons. Before the Temporary Exemption expires the Council responsible for the affected good (in the case of food, the Forum) is required to determine whether a particular standard should apply to the good, and if so, the appropriate standard. Councils' determinations, including the Forum's, are governed by COAG's Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards-Setting Bodies.

The Forum may make decisions relating to standards proposed as a result of a jurisdiction invoking a Temporary Exemption or a referral under TTMRA.

If a Temporary Exemption is invoked, or a referral made, the Forum must endeavour to make a decision before the expiry of the Temporary Exemption or within 12 months of the referral.

When the Forum is considering TTMRA-related issues, determinations are made on a vote in favour by at least two-thirds of Participating Parties. This requirement, effective only for TTMRA issues, supersedes any existing voting arrangements of the Forum.

New Zealand will not vote on issues that are relevant to Australian jurisdictions only.

Any proposed standards or regulations considered under the TTMRA Temporary Exemption or referral provisions will be developed consistent with the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standards-Setting Bodies.

2.10 Meeting records - transparency and public accountability

2.10.1 Communiqué

A communiqué will be issued after a meeting of the Forum. The communiqué will be prepared by the Secretariat and cleared through all members, prior to being issued at the discretion of the Chair. All communiqués are posted on the Food Regulation website.

When matters require further consideration, any Forum announcements should not pre-empt this further consideration, particularly where matters involve financial implications that have not been settled by the Forum.

A copy of the released communiqué is to be provided to the Commonwealth-State Relations Secretariat at the Department of Prime Minister and Cabinet.

2.10.2 Outcomes

During face-to-face meetings of the Forum, the Secretariat will undertake live recording of the Forum's decisions and key outcomes. Within two working days of the meeting these draft decisions and outcomes will be circulated to Forum Members (and Primary Contacts) for comment within five working days.

Following on from this, the Secretariat will prepare draft minutes and action list within 12 working days, subject to the approval of the Forum Chair (as delegated), will dispatch to all Forum Members and Primary Contacts for consideration. Comments on the minutes are required, preferably by e-mail, within 10 working days of dispatch by the Secretariat. At the discretion of the Forum Chair, the Secretariat will provide the draft minutes to other bodies as required. The Forum will endorse the final minutes at its next meeting.

A copy of the final resolutions/minutes is to be provided to the Commonwealth-State Relations Secretariat at the Department of Prime Minister and Cabinet.

2.10.3 Web presence

The Forum will have a continued presence on the internet, with a web page that is updated regularly, and provides information about the Forum, including but not limited to:

- membership and chairing arrangements;
- scope of work;
- priority issues;
- outcomes of meetings and decisions (provided in the form of communiqués);
- contact details; and
- links to relevant documents and to the COAG website.

Furthermore, the Forum's web presence should clearly reflect its relationship to COAG, and should avoid using the branding of any single jurisdiction or department. The Forum's website should be accessible to the public via the COAG website.

2.10.4 Out-of-session decisions of the Forum in relation to draft Standards notified

Under clause 3 (d) of the FRA, the Forum has approved the process specified below for making and recording out-of-session resolutions by the Forum in respect of draft standards notified by FSANZ.

- (a) If a lead Minister on the Forum notifies the Secretariat that one or more criteria/grounds for review applies to a draft standard or a variation of a standard or an urgent standard or an urgent variation of a standard then that Minister must provide to the Secretariat:
 - a statement of each of the criteria or grounds that is considered applicable (Statement of Criteria/Grounds);
 - a statement of the reasons (Statement of Reasons) as to why it is considered that each of the criteria/grounds applies; and
 - a short summary of those reasons for publication (Summary of Reasons).
- (b) In the event the Forum requests FSANZ to review a draft standard or a variation of a standard or an urgent standard or an urgent variation of a standard the Secretariat will, at the same time as it prepares the Forum notification to FSANZ, prepare a Notice for Publication (the Notice) set the date for the publication of the Notice 14 business days after FSANZ has been notified of the Forum's request for review (Date of Publication).
- (c) The Notice will specify the criteria or grounds considered applicable to request the review and the Summary of Reasons provided by the Ministers as to why each of the criteria/grounds applies. The Statement of Reasons will not be included in the Notice.
- (d) A confidential and embargoed copy of the Notice will be circulated to all jurisdictions, Ministers and FSANZ at the same time as the notification from the Forum is forwarded to FSANZ.

(e) The Secretariat will publish the Notice on the Food Regulation website on the date of publication.

2.11 Regulatory impact assessment

The Best Practice Regulation Guide is designed to ensure that regulatory processes at the national level, including Regulation Impact Statements (RISs), are consistent with the principles of best practice agreed by COAG. The Forum must ensure that a RIS is prepared for all regulatory proposals (such as quasi-regulation, co-regulation and 'black' letter law) which would affect business or impact on competition.

The Forum must also seek to achieve consistency with New Zealand Government guidelines on regulatory impact assessment.

The RIS process includes two steps. The purpose of the first step, a RIS, for consultation, is to canvass the regulatory options under consideration, in order to determine the relative costs and benefits of those options. The purpose of the second step, the decision RIS, which is to be considered at the time the decision made, is to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process. Each of the two steps needs to be approved by the Office of Best Practice Regulation.

2.12 Dispute resolution

Clause 35 of the FRA requires that, where there is a dispute (other than a dispute in connection with the contents of a food standard or variation of a food standard), Members must first attempt to resolve the dispute. If this fails, the dispute may be referred to COAG to seek a resolution.

2.13 Consultative mechanism

For the development of food regulation policy and to seek input and advice from stakeholders, the Forum has in place a flexible approach to consultation.

Under clause 9 of the FRA, the Consultative Mechanism shall:

- provide for the views of stakeholders to be considered by the Forum when setting food regulation policy guidelines;
- inform the policy guideline development process;
- provide for increased accountability and transparency in decision making on policy guidelines;
- enhance stakeholder confidence in the food regulatory system and build relationships with those developing policy; and
- accommodate the diversity of stakeholders across Australia and New Zealand including primary production, processed food, food retail, food service, consumers, public health professionals; and small business.

The Consultation Mechanism is separate from and additional to the statutory consultation requirements that FSANZ must fulfil as part of its processes during the development of food standards.

2.14 Confidentiality and release of information

All documents prepared for the Forum should be treated as sensitive, unless otherwise agreed by the Forum, and only distributed on a strict need-to-know basis.

All Forum papers and reports shall be treated as confidential documents with circulation limited to Forum members and FRSC members and bodies unless otherwise directed by the Forum. All such papers should include an appropriate security designation.

If a Member of the Forum receives a request for a document to be made public (either through a Freedom of Information request, a request under the *Official Information Act 1982* (NZ), a request

from a Royal Commission or some other avenue), all Members should be consulted regarding the release of the document.

2.15 Liaison between Councils

When considering intergovernmental matters which the Forum considers have implications beyond the areas of responsibility of the Forum, the Forum should consult other relevant Councils through liaison between the Chairs and Secretariats as appropriate.

Issues that have major cross-portfolio or whole-of-government implications are to be referred to COAG. Where there is a need for policy development outside the scope of the Forum's governing instruments, the work will be allocated by COAG to the relevant Standing or Select Council.

2.16 Reporting to COAG

Timelines for reporting to COAG are provided in the Handbook for COAG Councils (2011).

The Forum must provide its proposed work plan for the next financial year to the Commonwealth-State Relations Secretariat at the Department of Prime Minister and Cabinet by 31 May each year.

The Forum must report to COAG annually by 31 July, through the Commonwealth-State Relations Secretariat at the Department of Prime Minister and Cabinet, with an overview of decisions taken as a result of its legislative or governance responsibilities and changes made to legislation or agreements.

The annual reporting template is provided as an appendix to the Handbook for COAG Councils (2011).

2.17 Review provisions

In accordance with the Handbook for COAG Councils (2011), the Forum will undertake a review approximately every three years that will consider:

- structure, including chairing and secretariat arrangements;
- number of meetings;
- costs and funding issues;
- objectives and performance;
- implementation of decisions;
- relationship with other Councils and COAG;
- areas of possible overlap, including recommendations with timelines for addressing any issues in the report; and
- sub-committees and working parties to ensure they are limited to those that are essential.

The Forum must provide the review outcomes, in addition to any proposed changes to the Forum's Terms of Reference, to the Commonwealth-State Relations Secretariat at the Department of Prime Minister and Cabinet no later than the next 31 July. The Forum will also consider any necessary amendments to its operating procedures document as part of this regular review cycle.

3: FOOD REGULATION STANDING COMMITTEE

3.1 Chair

The Food Regulation Agreement (FRA) states that the Chair of the Food Regulation Standing Committee (FRSC) is the Secretary of the Department for which the Chair of the Legislative and Governance Forum on Food Regulation (Forum) has portfolio responsibility, that is, the Secretary of the Commonwealth Department of Health and Ageing.

A Deputy Chair may be appointed in the temporary absence of the Chair during a meeting, as decided by the Chair.

The FRSC is to be supported by the Food Regulation Secretariat (the Secretariat). The responsibilities of the Secretariat are described in Section 4.

3.2 Membership

The FRA states that the membership of FRSC reflects the membership of the Forum. In addition, the FRA states that FRSC Members shall invite the Australian Local Government Association to be a full participating member of the FRSC.

The Chief Executive Officer of Food Standards Australia New Zealand (FSANZ) will be asked to attend as an observer.

FRSC members are required to reflect a 'whole-of-jurisdiction' view and to have the authority to make decisions on behalf of their jurisdictions.

3.3 Conflicts of interest

Members and supporting staff have a responsibility to disclose and take reasonable steps to avoid any conflict of interest, real or apparent in connection with their membership of FRSC or support of the Forum or its subordinate bodies.

3.4 Roles and responsibilities

FRSC is responsible for:

- coordinating policy advice to the Forum including coordinating the agenda for its meetings;
- ensuring a nationally consistent approach to the implementation and enforcement of food standards; and
- advising the Forum on the initiation, review and development of Standing Committee activities.

3.4.1 Work program

FRSC will develop its own program of work for the financial year in response to direction from the Forum and will report to the Forum on progress towards implementation of that program. The first meeting of each year will include an agenda item on planning FRSC activities for the coming year.

3.5 Costs

As a general principle, costs related to Forum and FRSC activities will be shared by the Commonwealth, States, Territories and New Zealand in an agreed ratio related to a particular initiative.

Individual jurisdictions will meet the cost of their participation for FRSC, including costs associated with travel to meetings.

Resources required for a special project or strategy agreed to by the Forum and FRSC shall be on a cost-shared basis as formulated for the Australian Health Ministers Advisory Council (AHMAC),

unless otherwise decided by the FRSC. This formula applies to project work only and will be negotiated among the parties on a case-by-case basis and is reviewed yearly.

3.6 Meeting arrangements

3.6.1 Frequency and timing of meetings

The number of FRSC meetings required each year will be determined by the business load to be managed. FRSC meetings will be held a minimum of five weeks before Forum meetings.

Where feasible, face-to-face meetings are to be scheduled at least six months in advance. Meeting dates are to be determined around the availability of the Chair.

3.6.2 Teleconference

Where practicable, additional activities of the FRSC will be undertaken using the teleconference or videoconference networks, to minimise meetings and travel costs and to minimise the impact on the environment.

Where a teleconference or videoconference of the FRSC is required, the Secretariat will:

- book the teleconference/videoconference to include all Members and other appropriate parties at the time agreed;
- circulate agenda papers or other information pertaining to the teleconference/ videoconference as soon as they are received by the Secretariat; and
- prepare and distribute minutes of the teleconference/videoconference using the same timeframe as for the face-to-face meetings where feasible.

3.6.3 Meeting costs

The jurisdiction hosting the FRSC meeting will be responsible for all of the costs of the meeting including the venue, equipment and catering, and excluding accommodation and travel. If the hosting jurisdiction cannot provide sufficient funding, the Secretariat may offer financial assistance.

3.7 Meeting agendas and agenda papers

3.7.1 Setting the agenda

Two months before the next FRSC meeting, the Secretariat will forward a draft agenda to FRSC Members and Primary Contacts, in addition to the Chairs of subordinate bodies and to relevant agencies including FSANZ, and will also seek their nominations for items to include on the agenda.

The Chair of FRSC determines the final agenda for the meeting.

3.7.2 Late agenda items

If additional items are proposed for discussion after the agenda is finalised, the Chair will seek the views of jurisdictions prior to the inclusion of any proposed additional items.

These additional items may be included formally on the meeting agenda only if they are unable to be handled out-of-session and only following the agreement of a majority of members. No individual jurisdiction will have the power of veto.

3.7.3 Submission and dispatch of agenda papers

Submissions and papers for consideration by FRSC are to be lodged with the Secretariat at least 12 working days prior to the meeting.

An agenda paper template is to be used when preparing papers for the meeting. The template is available from the Secretariat.

The agenda and accompanying papers will be dispatched by the Secretariat to FRSC Members and Primary Contacts 10 working days prior to the scheduled meeting. Electronic dispatch is the preferred mode of transmission for all papers.

3.7.4 Late agenda papers

Any papers received late will only be accepted at the discretion of the FRSC Chair. Late papers will be regarded as a low priority on the agenda, unless the Chair considers it otherwise.

If accepted, late papers will be sent out in batches to Members and Primary Contacts when received by the Secretariat.

3.8 Decision-making

FRSC will seek to reach decisions by consensus. FRSC members are required to reflect a 'whole-of-jurisdiction' view and to have the authority to make decisions on behalf of their jurisdictions.

FRSC agreed at its first meeting to adopt a collegiate approach to performing its functions under the IGA and affirmed the autonomy of its decision making to nominate members to serve on its subordinate bodies and Working Groups.

FRSC will establish appropriate mechanisms, comprised of all interested jurisdictions, to enable the development of policy and full and proper consideration of policy issues and options.

All member jurisdictions will be able to initiate new policy proposals and/or have the opportunity to be involved in the development of all policy proposals at an early stage.

3.9 Meeting records

During face-to-face meetings of the Forum, the Secretariat will undertake live recording of the FRSC decisions and key outcomes. Within 2 working days of the meeting these draft decisions and outcomes will be circulated to FRSC Members and Primary Contacts for comment within 5 working days.

Following on from this, the Secretariat will prepare draft minutes and action list within 12 working days of the meeting and, subject to the approval of the Chair (as delegated), will dispatch to all FRSC Members and Primary Contacts for consideration. Comments on the minutes are required, preferably by e-mail, within 10 working days of dispatch by the Secretariat. FRSC will endorse the final minutes at its next meeting.

3.10 Regulation Impact Assessment

In its role to co-ordinating policy advice to the Forum, FRSC must subject any regulatory options (such as proposals for quasi-regulation, co-regulation and 'black letter law') under consideration to a regulatory impact assessment process through the preparation of a draft and final RIS.

The purpose of a draft RIS for consultation is to canvass the regulatory options under consideration, in order to determine the relative costs and benefits of those options. The purpose of a final RIS for decision makers is to draw conclusions on whether regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be, taking into account the outcomes of the consultation process.

Early advice should be sought from the Office of Best Practice Regulation (OBPR) within the Commonwealth Department of Finance and Deregulation. The Best Practice Regulation Guide has been designed to ensure that regulatory processes at the national level, including RISs, are consistent with the principles of best practice agreed by COAG.

3.11 Consultative mechanism

For the development of food regulation policy and to seek input and advice from stakeholders, the Forum has in place a flexible approach to consultation. Under Clause 9 of the FRA, the Consultative Mechanism shall:

- provide for the views of stakeholders to be considered by the Forum when setting food regulation policy guidelines;
- inform the policy guideline development process;
- provide for increased accountability and transparency in decision making on policy guidelines;
- enhance stakeholder confidence in the food regulatory system and build relationships with those developing policy; and
- accommodate the diversity of stakeholders across Australia and New Zealand including primary production, processed food, food retail, food service, consumers, public health professionals; and small business.

3.12 Confidentiality and release of information

All documents prepared for FRSC should be treated as sensitive, unless otherwise agreed by FRSC, and only distributed on a strict need to know basis.

All FRSC papers and reports shall be treated as confidential documents with circulation limited to FRSC Members and bodies unless otherwise directed by FRSC. All such papers should include an appropriate security designation.

If a FRSC Member receives a request for a document to be made public (either through a Freedom of Information request, a request under the *Official Information Act 1982* (NZ), a request from a Royal Commission or some other avenue), all Members should be consulted regarding the release of the document.

3.13 Liaison with other senior officials committees

FRSC has agreed to include a standing item at the end of the agenda to identify the issues that should be shared with other committees.

4: FOOD REGULATION SECRETARIAT

4.1 Secretariat support

In accordance with the FRA the Forum Chair's portfolio, that is, the Commonwealth Department of Health and Ageing, is responsible for providing secretariat services to the high level committees that govern the Food Regulation System.

The Food Regulation Secretariat (the Secretariat) will be available to manage and support the operations of the Legislative and Governance Forum on Food Regulation (Forum) the Food Regulation Standing Committee (FRSC) and the Implementation Sub-Committee (ISC).

4.2 Independence and fairness

The Secretariat is independent of the Commonwealth in relation to its day-to-day operations. The Secretariat should be fair and impartial towards all member jurisdictions, regardless of its location.

4.3 Funding

The activities of the Secretariat are funded by the portfolio in which the Secretariat is based, namely, the Commonwealth Department of Health and Ageing.

4.4 Operational principles

The Handbook for COAG Councils (2001) provides the following general principles to govern how secretariats should best operate and provide strategic support:

- Effective governance – secretariats should have strong governance systems and a good understanding of their stakeholder base and the issues managed by their Councils.
- Transparency and accountability – Councils are accountable to COAG. Secretariats need to communicate clearly decisions and outcomes. It is essential that secretariats employ strong stakeholder communication strategies so outcomes are transparent.
- Quality assurance – secretariats should exercise quality assurance of Council materials. Secretariats need to have the capacity to undertake policy analysis, plan strategically and develop reform focused and strategic agendas.
- Professional competence – secretariats should be proactive in maintaining their professional competence, including knowledge about current legislation and policies that may affect Councils, for example classification of materials.
- Coordination capacity – secretariats should be the primary coordination point for their Councils. It is essential that secretariats employ effective co-ordination strategies, particularly in relation to the priority tasks of their Councils.
- Fairness – secretariats should be fair and impartial towards all member jurisdictions, regardless of secretariat location.
- Cost effectiveness - secretariats should utilise resources effectively. Secretariats should encourage their Councils to utilise technologies that reduce costs associated with their work, for example the TelePresence network for meetings.
- Custodianship – secretariats should be vigilant in overseeing and maintaining the documentation for their Councils.
- Flexibility – secretariats should be innovative, agile and responsive to the emerging challenges faced by their Councils.

4.5 Jurisdictional primary contacts

Each party to the Food Regulation Agreement (FRA) and New Zealand will appoint an appropriate senior officer from their agency who will be the Primary Contact for that agency/authority with whom the Secretariat will deal on all Forum, FRSC and ISC business.

The Primary Contact will deal with relevant officers within their agency to coordinate the development of responses to agenda papers circulated for out-of-session consideration by the Forum, FRSC or ISC.

4.6 Roles and responsibilities

The Secretariat provides timely and effective organisational support to the Forum, FRSC and ISC. Responsibilities of the Secretariat are to:

- organise face-to-face meetings;
- organise teleconferences / videoconferences as required;
- coordinate out-of-session business;
- coordinate the drafting of agenda papers and their circulation members
- arrange clearance of draft meeting records and circulate final meeting records to members;
- maintain a record of final papers; and
- manage the Forum response to FSANZ notifications.

The Secretariat has no policy role and will not be substantively involved in writing policy papers. However, the Secretariat will provide advice on the substantive content of proposed agenda items and will brief the chair on process and governance issues.

The Secretariat also provides strategic support in establishing and monitoring work programs for the Forum and FRSC, and is responsible for having procedures in place to track the implementation of decisions by the Forum and FRSC.

The Secretariat develops agenda paper templates for the Forum, FRSC and ISC.

Electronic dispatch is the preferred mode of transmission for all agenda papers, except for papers for meetings of the Forum which are to be sent in hard copy via courier.

4.6.1 Legislative and Governance Forum on Food Regulation

In developing the draft agenda, the Secretariat should assist the Forum and FRSC to remain focused on issues of the most strategic importance, by applying the following structure to the agenda:

- priorities of national significance – major work priorities for the Forum;
- items for special consideration – items with the need for focused discussion and thorough consideration by the Forum to ensure current priorities and activities are driven to successful conclusions; and
- implementation, performance and accountability – to address progress reports on implementation and delivery, ensuring Forum follow through.

Two months before the next Forum meeting, the Secretariat will forward a draft agenda to the members of the Forum, FRSC (and Primary Contacts), the Chairs of subordinate bodies and to relevant agencies, including FSANZ, and will also seek their nominations for items to include on the agenda.

The Secretariat will dispatch the final agenda and accompanying papers in hard copy via courier to Forum members (and an emailed version to Primary Contacts) 20 working days prior to the scheduled meeting.

Where feasible, hard copies of late papers will be dispatched to Forum Members in batches by courier, as these papers are received by the Secretariat. An emailed version of these papers will also be sent to Primary Contacts.

4.6.2 Food Regulation Standing Committee

Two months before the next FRSC meeting, the Secretariat will forward a draft agenda to FRSC Members (and Primary Contacts), in addition to the Chairs of subordinate bodies and to relevant agencies including FSANZ, and will also seek their nominations for items to include on the agenda.

The Secretariat will electronically dispatch the final agenda and accompanying papers to FRSC members and Primary Contacts 10 working days prior to the scheduled meeting.

4.7 Meeting arrangements

4.7.1 Meeting schedules

The Secretariat will develop draft meeting schedules for consideration by the Forum, FRSC and ISC up to six months in advance, where possible. In line with this the Secretariat will establish a rotational hosting system for meetings of the Forum, FRSC and ISC.

4.7.2 Venue and equipment

The Secretariat is responsible for liaising with the jurisdictions hosting the meeting to determine potential meeting venues.

4.7.3 Teleconferences and videoconferences

When required, the Secretariat will make arrangements for the activities of the Forum, FRSC and ISC to be undertaken using the teleconference/videoconference network, in order to minimise meetings and travel costs and to minimise the impact on the environment.

Where a teleconference or videoconference of the Forum, FRSC or ISC is required, the Secretariat will:

- book the teleconference/videoconference to include all Members, and other appropriate parties (including FSANZ) at the time agreed;
- circulate agenda papers or other information pertaining to the teleconference/ videoconference as soon as they are received by the Secretariat; and
- prepare and distribute minutes of the teleconference/videoconference using the same timeframe as for the face-to-face meetings where feasible.

4.8 Meetings records

During face-to-face meetings of the Forum and FRSC, the Secretariat will undertake live recording of the Forum's decisions and key outcomes. Within 2 working days of the meeting these draft decisions and outcomes will be circulated to Forum Members (and Primary Contacts) for comment. The Secretariat will ensure that all wording of decisions complies with legal requirements.

Following on from this, the Secretariat will prepare draft minutes and action list within 12 working days and subject to the approval of the Chair (as delegated), will dispatch to all Members and Primary Contacts for consideration. At the discretion of the Chair, the Secretariat will provide the draft minutes to other bodies as required. The Forum and FRSC will endorse their final minutes at their next meeting.

4.9.1 Teleconferences and videoconferences

Inline with the above stated timeframe, the Secretariat will record resolutions made during teleconferences/ videoconference and communicate these in writing to all Members or the Forum, FRSC, FSANZ, and Primary Contacts following the teleconference, subject to clearance by the Chair.

4.9 Meeting actions arising

Arising from meetings of the Forum, FRSC and ISC, the Secretariat will prepare a list of items requiring action for distribution with the draft minutes. The Secretariat will be responsible for monitoring the completion of each action item.

Members are responsible for implementing actions agreed by them in the minutes.

4.10 Communiqués

During face-to-face meetings of the Forum, the Secretariat will provide a draft communiqué for Forum Members' consideration and endorsement prior to meeting close.

The Secretariat will arrange the publication of the communiqué through emailing and faxing it to the media on the same day as the meeting.

All communiqués are to be emailed to stakeholder groups, and are to be posted on the Food Regulation website.

4.10 Notification of decisions to FSANZ

As soon as practical after each meeting of the Forum, the Secretariat is responsible for coordinating the formal notification to FSANZ of decisions by the Forum that are applicable to the work of FSANZ, including the endorsement or policy guidelines, requests for review of a standard, and other key decisions.

4.11 Transparency and accountability

The Secretariat will ensure that the Forum has a continued presence on the internet, with a web page that is updated regularly, and provides information about the Forum, including but not limited to:

- membership and chairing arrangements;
- scope of work;
- priority issues;
- outcomes of meetings and decisions (provided in the form of communiqués);
- contact details; and
- links to relevant documents and to the COAG website.

The Secretariat will ensure that the Forum's website is made accessible to the public via the COAG website.

The Secretariat is also responsible for ensuring that the Forum meets the timelines for regularly reporting to COAG (refer to *2.16 Reporting to COAG*).

4.12 Confidentiality and release of information

4.12.1 Confidentiality

Agenda papers, draft minutes, action lists and endorsed minutes of the Forum, FRSC and ISC meetings are not to be released for public access.

The Secretariat must ensure that all agenda papers and minutes for the Forum, FRSC and ISC are marked "In-Confidence".

4.12.2 Release of information

As a general principle, where there is an expectation that a document prepared for the Forum, FRSC or ISC will be made public, the Secretariat will ensure that all Members are advised early in the preparation of the document.

The communiqué that is released following each Forum meeting is publicly available on the Food Regulation website and is emailed and faxed to the media and stakeholder groups.

If the Secretariat receives a request for a document to be made public (either through a Freedom of Information request, a request from a Royal Commission or some other avenue), the Secretariat will advise all Members of the Forum, FRSC and ISC (as applicable).

4.12.3 Providing data

The Forum has responsibilities for providing data in a timely way in relation to National Agreements, some National Partnership Agreements and the Report of Government Services (ROGS). The Secretariat has a role in assisting and ensuring that the Forum fulfils its data reporting responsibilities expeditiously and efficiently.

4.13 Out-of-session business

“For information” items and any requiring urgent attention will be circulated to Members of the Forum, FRSC or ISC (as well as Jurisdictional Primary Contacts) as soon as they are received by the Secretariat.

4.14 Regulation Impact Assessment

The Forum is required to prepare a Regulation Impact Statement (RIS) for all regulatory proposals which would affect business or impact on competition. The Secretariat has a role in setting up processes to strengthen the compliance and transparency of RIS processes. The Office of Best Practice Regulation (OBPR) within the Commonwealth Department of Finance and Deregulation should be consulted early as to whether a RIS should be prepared for a proposal.

4.15 Record keeping

The Secretariat is responsible for meeting the recordkeeping and archives legislation that applies in the jurisdiction in which it is based, namely the Commonwealth. The Secretariat must ensure that there is an appropriate record of the activities of the Forum, FRSC and ISC.

4.16 Liaison with other COAG Council secretariats

When considering intergovernmental matters which have implications beyond the areas of responsibility of the Forum, other relevant Councils should be consulted. The Secretariat is responsible for coordinating this contact and the additional referral of such issues to COAG where there are major cross-portfolio or whole-of-government implications.

Legislative and Governance Forum on Food Regulation

Terms of Reference

COAG Legislative and Governance Fora are established to oversee significant collective responsibilities for Ministers set out in legislation, intergovernmental agreements and treaties, which are outside the scope of Standing Councils.

Chair The Member who represents the Commonwealth with responsibility for health matters.

Membership Ministers with responsibility for food regulation matters from jurisdictions signatory to the legislative and governance instruments overseen by this Forum. Where a jurisdiction is represented by more than one Member, the jurisdiction shall nominate a lead Member.

Legislative and Governance Responsibilities

Responsibilities under the following instruments:

- *Food Standards Australia New Zealand Act 1991 (Cth)*
- Intergovernmental Agreement for Food Reforms 2010
- Intergovernmental Agreement on Food Regulation 2000
- Trans Tasman Mutual Recognition Arrangement 1998
- Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System (the Food Treaty) 1995
- Australia New Zealand Closer Economic Relations Free Trade Agreement 1983.

The Forum commits that by July 2016, specific references to the former Ministerial Council in the above governing instruments will be changed to refer instead to the 'Ministers responsible for [.....]'.

Other The Forum will consider a response to the recommendations of the Food Labelling Review (Labelling Logic) and report to COAG by early 2012.

Operations Subject to any rules in the relevant governing instruments, Fora should not generally require more than two face to face meetings a year. Meetings of Councils and officials will utilise the TelePresence network as much as possible to meet and to transact business, to minimise environmental impacts and meeting and travel costs. Other operational arrangements are to be made by the Forum and do not require COAG endorsement.

Decision-Making Subject to any specific voting rules included in relevant governing instrument(s):

- the Forum will make decisions on the basis of consensus wherever possible; and
- where necessary, the principle of one vote per jurisdiction will apply.

Reporting The Forum will provide COAG with an annual overview of decisions taken as a result of its legislative or governance responsibilities and changes made to legislation or agreements.