

Legislative and Governance Forum on Food Regulation (FoFR)

convening as the Australia and New Zealand Food Regulation Ministerial Council

7 DECEMBER 2012

FOOD MINISTERS REQUEST A REVIEW OF A1039 – LOW THC HEMP AS A FOOD

The Legislative and Governance Forum on Food Regulation (Forum), convening as the Australia and New Zealand Food Regulation Ministerial Council, has requested that Food Standards Australia New Zealand (FSANZ) review the draft variation to *Standard 1.4.4* resulting from Application A1039 – Low THC Hemp as a Food. Food Ministers have agreed to seek the advice of the Standing Council on Police and Emergency Services in relation to law enforcement issues by mid-2013. The Forum has also requested that the Food Regulation Standing Committee explore the potential issues related to the marketing of food containing low THC hemp.

The Forum has requested the review of the draft variation under the following criteria:

It does not protect public health and safety

Food Ministers are concerned that the use of low THC hemp in food may undermine drug reduction strategies by contributing to a public perception that low levels of cannabis are acceptable and safe to consume.

In addition, permitting small quantities of THC, an otherwise prohibited substance, in foodstuffs complicates and introduces a level of doubt into roadside drug testing, which is a road safety measure aimed at preventing persons under the influence of intoxicating substances from endangering the safety of themselves and other road users.

It is difficult to enforce and comply with in both practical and resource terms

Food Ministers are concerned about the implications for law enforcement in Australia, particularly the potential issues with distinguishing between high and low THC varieties of cannabis. The variation to *Standard 1.4.4* would generate an additional burden for regulatory agencies in distinguishing between hemp products containing high and low levels of THC. This burden has not been included in the Assessment Report.

The consumption of low THC hemp foods may also result in detectable THC residues and may make law enforcement activities relating to illicit drug more complex. The Assessment Report does not clearly establish that low THC hemp food products would not affect oral and urine drug testing. For example, enforcement of roadside drug testing would be compromised due to uncertainty about interference with oral fluid drug testing and whether the consumption of hemp foods, with low levels of THC, will produce a positive result or false positive. Evidence from a peer-reviewed study would be necessary in order to determine the impact of low THC hemp foods on roadside drug testing – especially as there is currently no agreed testing method to determine THC intoxication. This raises further concerns about the significant burden that may be placed on law enforcement agencies and the judicial system, where false positive results would require additional testing and potentially court action. There is also the potential for the consumption of low THC hemp foods to be used as a legal defence against a positive THC oral fluid test result.

Food Ministers are also concerned about the consistency of the proposed variation to *Standard 1.4.4* with the international drug control conventions. It is considered that a variation to *Standard 1.4.4* to permit the use of products from cannabis with a quantifiable level of THC would be inconsistent with overarching restrictions that apply under the *Single Convention on Narcotic Drugs, 1961* and the *Convention on Psychotropic Substances, 1971*, to which Australia is a signatory. Under these conventions, Australian border control legislation, specifically the *Customs (Prohibited Imports) Regulation 1956* and *Customs (Prohibited Exports) Regulations 1958*, limits the import and export of both cannabis and THC to medical and scientific use only. In addition, the approval of this standard will put the Food Standards Code in direct conflict with legislation in a number of states and territories.

FSANZ has until 31 October 2013 to review the draft standard and re-affirm, re-affirm with amendments, or withdraw its approval of the draft variation to the Standard. Ministers will consider the Review at their meeting in December 2013.