

Food Regulation Agreement

AN AGREEMENT made the 6 July 2010 between:

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF QUEENSLAND;

The STATE OF WESTERN AUSTRALIA;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The AUSTRALIAN CAPITAL TERRITORY; and

The NORTHERN TERRITORY OF AUSTRALIA
collectively called 'the States and Territories'.

WHEREAS -

A. The Commonwealth and the States and Territories agree that there is a need to maintain 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.

C. This Agreement constitutes the agreement made between the Commonwealth and the States and Territories on 3 November 2000 as amended in the agreement dated 6 December 2002, 3 July 2008 and as now amended.

Note: 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 ceased to operate upon the commencement of the 2000 Agreement.

D. Under this Agreement, the Parties have established a Council, known as the Australia and New Zealand Food Regulation Ministerial Council, with the functions set out in Part III of this Agreement and roles and responsibilities set out under the *Food Standards Australia New Zealand Act 1991* (the Commonwealth Act).

E. The Commonwealth has established the authority entitled Food Standards Australia New Zealand under the Commonwealth Act, to give effect to the Food Regulation Agreement as in force on 1 July 2002, with the functions set out in Part 2 of that Commonwealth Act and managed by the Board as constituted under Part 4, Division 1 of that Commonwealth Act.

F. The Government of Australia and the Government of New Zealand entered into an Agreement that came into force on 1 July 2002 entitled 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system'.

Note: This Agreement replaced the agreement between the Government of Australia and the Government of New Zealand that came into force on 5 July 1996 for establishing a system for the development of joint food standards.

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;

'Commonwealth Act' means the *Food Standards Australia New Zealand Act 1991* (Cth), which was previously known as the *Australia New Zealand Food Authority Act 1991*, as in force from time to time;

'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;

'draft standard or variation' has the same meaning as that phrase in Part 3, Division 3 of the Commonwealth Act;

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

'food standard', where the context permits, includes a draft standard or variation and an urgent standard;

'FSANZ' means Food Standards Australia New Zealand, formerly established under this Agreement and continued in existence under Part 2 of the Commonwealth Act;

'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, or is nominated by the Government of New Zealand to be responsible to the Ministerial Council for the responses of the Government of New Zealand, pursuant to Part III of the Agreement;

'Ministerial Council' means the Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement;

'Party' means a party to this Agreement;

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

'urgent standard' means a standard or variation approved by FSANZ as a result of an 'urgent application' or an 'urgent proposal', as those terms are defined in the Commonwealth Act.

(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 Australia and New Zealand Food Regulation Ministerial Council, established under this Agreement:

- (a) has 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) consists of one or more members representing each Party, and the Government of New Zealand, being 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) is chaired by a Minister with responsibility for the Commonwealth Health portfolio and supported by a Secretariat provided by that Minister's portfolio;
- (d) will 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 representing a Party (or his or her designated proxy for a particular meeting) and the lead Minister representing the Government of New Zealand shall have the right to vote on a resolution proposed by the Ministerial Council;
 - (iii) where the lead Minister representing a Party on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may:
 - (A) advise the Chairperson of the voting intentions of his or her Party, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting; or
 - (B) if the lead Minister has not advised the Chairperson of his or her voting intentions in accordance with clause 3(d)(iii)(A), by notice in writing to the Chairperson appoint another person to act as his or her proxy at that meeting and to vote on that resolution in the lead Minister's place;

- (iia) where the lead Minister representing the Government of New Zealand on the Ministerial Council is unable to be present at a meeting at which a vote is to be taken, that lead Minister may advise the Chairperson of the voting intentions of his or her Government, in writing by mail, teleprinter, facsimile or other mode of electronic communication prior to the meeting;
 - (iv) a vote under clause 3(d)(iii) or 3(d)(iia) will have the same effect as if the lead Minister representing a Party or the Government of New Zealand (as the case may be), 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;
 - (via) a vote on a resolution, either at a meeting or out-of-session, concerning a request for a review of a draft standard or variation under clause 3(e), will be carried by consensus if possible, or if no consensus is possible 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) will request FSANZ to review the draft standard or variations if:
- (a) FSANZ notifies the Ministerial Council that FSANZ has approved a draft standard or variation; and
 - (b) the Ministerial Council considers that one or more of the following criteria apply to the draft standard or variation:
 - (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) will ensure that a request for review made by the Ministerial Council under clause 3(e) includes details of:
- (i) the criterion, or criteria, that the Ministerial Council considered to be applicable to the draft standard or variation; and
 - (ii) the rationale and evidence that supports the Council's decision that the criterion or criteria is, or are (as the case may be), applicable;

(fa) will make public any decision by the Ministerial Council to request a review of a draft standard or variation, and the reasons for and evidence supporting that decision.

(g) has the power to amend or reject the draft standard or variation if:

(i) it receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments) and

(ii) it is agreed that one or more of the criteria in clause 3(e) still applies to the draft standard or variation,

provided the Ministerial Council complies with the Commonwealth Act in doing so;

(h) has the same obligations and powers in relation to urgent standards as it has under clauses 3(e), 3(f), 3(fa) and 3(g) in relation to draft standards and variations, except that for urgent standards the reference in clause 3(g) to 'amend or reject' is replaced with a reference to 'amend or revoke'; and

(i) can request FSANZ review an existing standard if the Ministerial Council considers that one or more of the criteria in clause 3(e) applies to that existing standard.

4. (a) Where:

(i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e); or

(ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or

(iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),

the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.

(b) The Parties agree that the Commonwealth Act will require FSANZ to publish in various manners (including publication in the Commonwealth of Australia Gazette), details about any amendment or revocation of an urgent standard if the Ministerial Council exercises its powers under clause 3(h).

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

Food Regulation Standing Committee

6. The Food Regulation Standing Committee, established under this Agreement:

(a) has 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) has a membership reflecting the Ministerial Council membership;

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

(d) is to be 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.

Consultative Mechanism

8. For the development of policy on food regulation and to seek input and advice from 'Stakeholders' the Ministerial Council has established a flexible approach to consultation, known as the Consultative Mechanism. The Consultative Mechanism was established in accordance with the processes agreed by the Parties and set out in the Principles and Protocols document published on the food regulation website, www.foodsecretariat.health.gov.au.

9. The Consultative Mechanism:

(a) shall

(i) provide for the views of stakeholders to be considered by the Ministerial Council when setting food regulation policy guidelines;

(ii) inform the policy guideline development process;

(iii) provide for increased accountability and transparency in decision making on policy guidelines; and

(iv) enhance stakeholder confidence in the food regulatory system and build relationships with those developing policy.

(b) shall accommodate the diversity of stakeholders across Australia and New Zealand including:

(i) Primary production;

(ii) Processed food;

(iii) Food retail;

(iv) Food service;

(v) Consumers;

(vi) Public health professionals;

(vii) Small business.

PART IV - FOOD LEGISLATION AND ADOPTION OF FOOD STANDARDS

State and Territory Food Acts

10. The States and Territories will use their best endeavours to ensure that their respective Parliaments retain in force, legislation that complies with clause 13 and 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).

11. The legislation that each State and Territory must make their best endeavours to keep current and retain in force:

(a) must 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 11(a) or 11(b).

12. 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.

13. States and Territories shall set penalties, whether by dollar amounts or by penalty units, for offences in the legislation submitted in accordance with clause 11 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.

Amendment of the Annexes

14. 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.

15. Where the Ministerial Council agrees, by a majority vote, to a recommendation under clause 14, it will refer the proposed amendments to the Parliamentary Counsels' Committee for drafting.

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

17. 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.

18. After amendment of an Annex under clause 15, States and Territories will use their best endeavours to submit to their respective Parliaments in accordance with clause 11, legislation which gives effect to the amendment.

Adoption of Food Standards

19. 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 or the Australian Pesticides and Veterinary Medicines Authority (APVMA); and

(b) published in the Commonwealth of Australia Gazette.

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

21. Subject to clause 24, no State or Territory shall, subsequent to the steps taken pursuant to clause 19, amend the food standards referred to in that clause.

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

23. 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.

24. 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 19, and that the circumstances affecting public health and safety would not allow time for the steps pursuant to clause 19 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 lead Minister for that 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 lead Minister for that 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.

25. An application to FSANZ pursuant to clause 24(c) shall be expedited by FSANZ so that it must notify the Ministerial Council of any approved standard arising from its consideration of that application within six months of the application being made.

26. 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.

27. 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

28. The Parties acknowledge and agree that the amendments to Part III clause 3(f), (g) and 4(a) of this amended Agreement cannot be given full effect unless and until the day on which an amendment of the 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system', that came into force on 1 July 2002, enters into force to reduce from two to one the number of occasions on which the Council may request FSANZ to review a draft standard or variation.

29. Until the agreement between Australia and New Zealand referred to in clause 28 comes into force, the Parties shall retain clause 3(f), (g) and 4(a) in the following terms:

3(f) if the Ministerial Council receives notice from FSANZ that, subsequent to a review undertaken under clause 3(e), FSANZ has decided to reaffirm a draft standard or variation (either in its entirety or subject to amendments), request FSANZ to review the draft standard or variation 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;

3(g) have the power to amend or reject a draft standard or variation 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 complies with the Commonwealth Act in doing so;

4(a) Where:

- (i) the Ministerial Council notifies FSANZ that it does not intend to request FSANZ to review a draft standard or variation under clauses 3(e) or 3(f); or*
- (ii) the Ministerial Council notifies FSANZ that it does not intend to amend or reject the draft standard or variation under clause 3(g); or*
- (iii) the Ministerial Council informs FSANZ that it has amended the draft standard or variation under clause 3(g),*

the Commonwealth Act shall require FSANZ to publish details about the draft standard or variation, as amended by the Ministerial Council if applicable, in various manners (including publication in the Commonwealth of Australia Gazette) as soon as practicable after receiving the notice from the Ministerial Council.

30. The Parties further acknowledge and agree that the amendments to Part III clause 3 of this amended Agreement cannot be given full effect unless and until the day on which an amendment of the 'Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system', that came into force on 1 July 2002, enters into force to remove the ability for any Lead Minister on the Ministerial Council to request a review of a draft standard.

31. Until the agreement between Australia and New Zealand referred to in clause 30 comes into force, the Parties shall retain clause 3 of the existing agreement.

PART VI - REVIEW OF IMPLEMENTATION AND EFFECTIVENESS

30. The Parties shall submit each year an update on key issues and associated outcomes deliberated by the Ministerial Council and Standing Committee during the preceding financial year to COAG.

31. Where a Party considers that this Agreement should be reviewed, it may request consultation with the other Parties to agree to conduct and conclude jointly a review of the effectiveness of this Agreement at a time mutually agreed by the Parties.

PART VII - AMENDMENT OR VARIATION OF AGREEMENT

32. 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 14 to 18.

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

34. 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

35. Where a dispute (other than a dispute in connection with the contents of a food standard or variation of a food standard) arises under this Agreement:

- (a) the Parties shall require the members of the Ministerial Council to attempt to resolve the dispute 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

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

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

38. 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.