

Submission to Food Standards Australia New Zealand draft Cost Recovery Implementation Statement



17 February 2017

1 INTRODUCTION

CropLife Australia (CropLife) is the national peak industry organisation representing the agricultural chemical and plant biotechnology sector in Australia. CropLife represents the innovators, developers, manufacturers and formulators of crop protection and agricultural biotechnology products. The plant science industry provides products to protect crops against pests, weeds and diseases, as well as developing crop biotechnology products that are key to the nation's agricultural productivity, sustainability and food security. The plant science industry is worth more than \$18 billion a year to the Australian economy and directly employs thousands of people across the country. CropLife Australia is part of the International Federation of 91 national associations globally.

CropLife recognises the importance of innovation in plant breeding. In most cases, plant breeding innovations are improvements and refinements of traditional breeding methods used to optimise plant health, nutritional quality and yield. Conventional breeding has a long history of delivering varieties that are safe for human and animal consumption.

The products of plant breeding innovation are critical to maintaining and improving Australia's agricultural productivity to meet future food security challenges. The Australia New Zealand Food Standards Code is the primary legislation regulating genetically modified (GM) food and food ingredients, and accordingly determines how agricultural biotechnology companies bring innovative new products to the Australian market.

CropLife and our member companies have a strong interest in any proposed changes to the cost recovery hourly rate under the *Food Standards Australia New Zealand (FSANZ) Act* and continue to seek the most effective and efficient regulatory system governing this important industry and market.

Each of our members' food or food ingredients derived from GM crop plants is rigorously assessed by FSANZ to ensure they present no unacceptable risk to consumers. This is after plant science companies have spent on average thirteen years and US\$136 million researching and developing each new crop biotechnology product. Such GM food products are essential to ensuring that all Australians have access to a safe and nutritious food secure future.

Overall Position

CropLife **supports** cost recovery where it is justifiable, appropriate and proportionate to recovering the **efficient costs** of a **specific government activity**¹.

CropLife **does not support** the draft Cost Recovery Implementation Statement (dCRIS) as released for public consultation by FSANZ on 13 December 2016.

¹ Australian Government Cost Recovery Guidelines, p1.

2 ISSUES FOR CONSIDERATION

Policy Approval

The dCRIS states (p5) that the Government's Second Reading Speech to the Australia New Zealand Food Authority Amendment Bill 1999 [No. 2] "explicitly recognised charging based on full cost recovery for assessing certain applications."

CropLife has reviewed the Second Reading Speech and believes that FSANZ has erred in its interpretation of the Government of the day's intention. In the Second Reading Speech, then Senator Campbell, representing the Minister for Health and Aged Care in the Senate, clearly states that "charges will be based on the amount of work involved in assessing such applications".

CropLife believes this gives FSANZ policy approval to legitimately recover the full cost **of the specific activity**, and **not** the full cost of the organisation.

CropLife, therefore, **submits** that FSANZ have significantly erred in including the direct and indirect costs of all FSANZ staff, and the total cost of the FSANZ Board, not directly involved in the **specific activity** in the Activity-Based Costing (ABC) model used in the dCRIS.

CropLife **submits** that FSANZ **do not have** the legislative or policy authority to recover the full costs associated with all FSANZ staff.

Assessment Against Cost Recovery Guidelines

CropLife **submits** that by apportioning the full costs of the organisation, the FSANZ dCRIS is inconsistent with a number of the other provisions in the Australian Government's Cost Recovery Guidelines (CRGs), including:

- Page 1, para 2: *Cost recovery involves the Australian Government charging the non-government sector some or all of the **efficient costs** of a **specific government activity**.*
- Page 5, para 10: *The Australian Government's overarching cost recovery policy is that, where appropriate, non-government recipients of **specific government activities** should be charged some or all of the costs of those **activities**.*
- Page 6, para 14: *Australian Government entities should generally set charges to recover the full cost of **providing specific activities**.*
- Page 14, para 36: *There must be alignment between the expenses of the **activity** (the costs involved in providing it) and the revenue (the income generated through charges for it). Cost recovery charges should be:*
 - *Closely linked to the **specific activity***
 - *Set to recover the full efficient cost of the **specific activity**.*

The CRGs (Third Edition, 2014) make a number of pertinent points relevant to assessing the FSANZ dCRIS, particularly in relation to which costs to recover, and policy outcomes:

Costs to recover

Page 6, para 12: *It is usually inappropriate to cost recover some government activities, such as general policy development, ministerial support, law enforcement, defence and national security.*

Page 35, para 84: *Indirect costs should be **apportioned** to a cost object using the entity's documented internal costing methodology. Common indirect costs include overhead costs such as salaries of staff in corporate (e.g. finance, human resources) and technical support (e.g. legal) areas, or accommodation costs (e.g. rent, maintenance, utilities).*

Figure 12 (p38)

Examples of costs that should not be included	Costs of the activity output or business process that cannot be reasonably attributed to an individual or organisation These could include: <ul style="list-style-type: none"> • <i>policy development</i> • <i>drafting of legislation</i> • <i>development and promulgation of general advisory material</i> • <i>provision of general advice to the government and Parliament</i> • <i>compliance and enforcement</i>
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It is quite clear that the CRGs link cost recovery to the cost of the provision of **specific activities**, and therefore FSANZ have substantially erred in attempting to use the full costs of running the organisation in the dCRIS, as a substantial proportion of these costs is not linked to the specific activity of the revenue generating (RG) staff.

To correct this, CropLife **recommends** that FSANZ develop an ABC model that more elegantly and precisely allocates the correct proportion of indirect costs to the costs involved in providing the **specific activity** (i.e. refer to the key word **apportioned** in the CRG para 84 as reproduced above). For example, it may be appropriate to allocate the cost of the proportion of the time spent by the FSANZ Board in making the decision to amend the Code based on the **specific activity**.

The Therapeutic Goods Administration (TGA) Cost Recovery Implementation Statement 2016-17 notes (p19) that the TGA utilises a software solution to improve the agency's ABC capability. The TGA CRIS states the first staff work effort survey was conducted in 2015 to attribute the time of regulatory staff to regulatory activities. CropLife **strongly recommends** that FSANZ adopt a similar software to that used by the TGA.

The TGA CRIS also notes that indirect costs are apportioned to a cost object using an internal costing methodology. Although the TGA CRIS is not as transparent as the FSANZ CRIS (for which FSANZ should be rightly commended) on indirect costs, CropLife would be highly surprised if the TGA allocates the full costs of running the organisation against its RG staff.

Outcomes versus Outputs

Linking cost recovery to outcomes

19. *A government entity must measure and assess its performance in achieving government policy outcomes. (p8)*
22. *When evaluating performance, government entities should consider common traps, which include:*
 - *assuming that the production of outputs secures the desired outcomes (p9)*

The FSANZ dCRIS does not address how the cost-recovered activities will help achieve policy **outcomes**. It only addresses **operational outputs** (amendments to the Code). The CRIS template and CRGs both **require** a description of how the cost-recovered activities will achieve policy **outcomes**.

Outcomes are those things that improve the lives of Australians. In the case of FSANZ, outcomes relate to a **safe food supply**.²

² See FSANZ Annual Reports or FSANZ section of the Department of Health Portfolio Budget Statement.

The dCRIS provides inadequate evidence that the large amount of public servant effort being expended on these cost-recovered activities is necessary to achieve food safety **outcomes**. The CRGs make the onus of proof clear: FSANZ needs to prove (not just assume) that the effort being expended is necessary to achieve food safety outcomes. 'Changes to the Code' are only an operational output and are not a policy outcome.

The majority (over 70 per cent) of cost-recovered applications to vary the Code are in relation to genetically modified (GM) commodities. The dCRIS Supporting Document 1 shows that almost all applications for GM relate to Code amendments for GM soybean, corn, cotton and canola. Of all the cost-recovered applications in recent years, there have been no cases where a safety issue has been identified or an application denied on safety grounds (i.e. denied for reasons other than administrative/mechanical reasons). That is, there is no evidence the cost-recovered activities have an impact on food safety outcomes.

CropLife **recommends** that FSANZ prepare a revised dCRIS that addresses the requirement in both the CRIS template and the CRGs in regard to a description of how the cost-recovered activities will achieve policy outcomes.

KPIs

The dCRIS refers to the statutory timelines and past performance in completing applications within nine months (for most applications), and 12 months for some complex applications. The dCRIS, however, makes no commitments about future performance or KPIs relating to future timeliness.

There does appear to be a downward trend in hours spent by FSANZ in more recent applications. That noted, it is unclear if the unlabelled horizontal axis in the two charts in FSANZ Supporting Document 1 are in order of time (e.g. oldest to most recent applications).

Overall, the timeliness of FSANZ appears to be in line with statutory timeframes. Recent changes, however, have removed the need for some time consuming tasks (publishing gazettes and newspaper notices). It may be possible to set a KPI to complete a percentage of applications within six months and the remainder within statutory timeframes.

Similarly, the structure of the cost recovery fee on the basis of time spent (i.e. 'the longer we take the more we get paid') is not conducive to driving efficiency. A partial refund payable when statutory timeframes were exceeded could sharpen the incentives for FSANZ to complete applications on time and to improve processes over time.

That noted, CropLife acknowledges that FSANZ generally processes applications promptly and provides refunds in many cases (rather than working to use up all the budgeted time available). While recent performance has been good, the final CRIS should include a commitment to maintain (and if possible improve on) past performance.

Exclusive Capturable Commercial Benefit (ECCB)

Generally, pre-market approval for GM foods and food ingredients is sought by CropLife member companies. This is because of global plant science industry stewardship arrangements by which CropLife member companies have committed to seek approval of GM products in all major trading markets in order to avoid situations of low level presence (LLP) of an unapproved GM product occurring³. The decision to seek food approval in markets where environmental release is not also sought comes at a great financial cost to CropLife members and indicates their commitment to, and belief in best practice stewardship of their products.

³ CropLife Australia Policy Statement on Product Launch Stewardship for Crop Biotechnology Products: <http://www.croplife.org.au/wp-content/uploads/2016/11/CropLife-Australia-Policy-Statement-Product-Launch-Stewardship-CB-Products.pdf>

The majority of applications for GM food approvals submitted to FSANZ by CropLife member companies do not confer financial gain (or a 'capturable economic benefit') directly on the Australian incorporated applicant. Any financial gain from these applications is actually derived indirectly by the Australian Government and the grain trade industry through facilitation of trade, and avoidance of any issues involving the LLP of an unapproved genetically modified organism (GMO).

There is a risk that higher fees may, therefore, act as a deterrent to the trade in foods containing genetically modified commodities more broadly, which would conflict with the Australian Government's broader policy objectives. FSANZ is not well placed to assess the consistency of their proposed cost recovery arrangements with the Government's wider policy objectives in trade and agriculture, which may require input from other agencies such as the Department of Foreign Affairs and Trade and the Department of Agriculture and Water Resources.

CropLife members have indicated that to date, they have not been given a choice by FSANZ as to whether their application is classed as ECCB or otherwise. CropLife suggests that FSANZ may have been incorrectly classifying some (but not all) applications from CropLife members as ECCB applications, on the presumption that an application from a company assumes there is ECCB, when in fact s146(6)(a) should not have applied.

Documents released to CropLife under a *Freedom of Information Act* request in 2013 indicated that there were internal concerns held by senior FSANZ officials that ECCB should perhaps not apply to all GM-food applications if the benefit is not being derived by the Australian incorporated applicant.

CropLife **recommends** that FSANZ request and then make public legal advice from the Office of the Australian Solicitor General in regard to the application of ECCB in instances where a benefit is not being derived by an Australian incorporated applicant.

Price Increase Analysis

The proposed 70 per cent increase in the hourly rate for processing applications is considerably higher than underlying wage growth or inflation.

The Australian economy is transitioning from a mining construction boom that saw record levels of investment from around the mid-2000s to the end of 2012. Over this period, the Australian economy performed well, posting strong economic growth and relatively strong wage growth. Over the period September 2008 to 2012, wages grew at an annual rate of 3.53 per cent, see Table 1. Over the last four-years wage and inflation growth has been relatively subdued, with wages increasing at the annual rate of 2.34 per cent per annum.

Inflation, over the period September 2012 to September 2016, has averaged an annual increase of 1.82 per cent, below the inflation target of the Reserve Bank of Australia.

Table 1: Wages and Inflation Growth – Australia, 2008-2016

	Sept. 2008 - Sept 2012	Sept. 2012 – Sept. 2016	Cumulative increase
	(Annual %)	(Annual %)	(%)
All groups CPI (Australia)	2.37	1.82	7.47
Total hourly rates of pay excluding bonuses (Australia)			
Public - All industries	3.80	2.59	10.78
Private and Public - All industries	3.53	2.34	9.70

Source:

ABS cat. no. 6401.0 Consumer Price Index Australia, ABS cat. no. 6345.0 Wage Price Index Australia

In the last four-years Public sector (All industry) wages have increased at an annual rate of 2.59 per cent, a cumulative increase of only 10.78 per cent. This public sector wage growth is significantly lower than the 70 per cent increase in the hourly rate being sought by FSANZ.

FSANZ has a salary structure and wage growth that is broadly similar to other Commonwealth agencies. FSANZ, however, has a large number of staff that are at the EL1/EL2 levels, compared with public sector averages.⁴ The most recent FSANZ staff Enterprise Agreement (AG2016/920), brought into effect in May 2016, provides an account of the salaries paid. Before this agreement came into effect in May, EL1 staff had an annual salary of between \$94,600 and \$105,378, with a 3 per cent increase when the agreement came into effect and a 2 per cent increase in 12 months and a 1 per cent increase in 24 months.

Allocations of Overheads

The dCRIS allocates all overheads to revenue generating (RG) staff. This seems to follow the same methodology as proposed by FSANZ in 2012 and obtained by CropLife through a *Freedom of Information Act* request in 2013.

At the time, a review commissioned by CropLife from Deloitte Access Economics noted:

All on-costs and overheads (a total of \$20 million) appear to only be spread across a denominator of 110,550 hours of 'revenue generating' work done by 'revenue generating staff'. In effect, time spent on 'revenue generating' activities (such as processing applications to amend the Code) are carrying the full \$20 million of the FSANZ annual operating budget.

While the figures have been updated to 2016, it is still the case that the total operating budget of \$20,366,000 is being spread over 104,629 billable hours.

This means the cost of staff (both salary and overhead) that perform non-recoverable FSANZ activities (as explained in the CRGs extract above, these include general advisory material, policy development, advice to government and parliament) are being allocated to RG staff.

In the case of FSANZ, non-RG staff time spent on tasks such as consumer information on its website, contributing to public health policy, appearing at Senate Estimates, attending forums on consumer issues or public health and so forth, all need to be excluded from the calculation.

The policy of 'full cost recovery' refers to the full cost of the cost-recovered **specific activity**, rather than the total annual operating costs of FSANZ. Only 1-2 per cent of FSANZ costs relate to cost-recovered activities, so the calculation needs to focus more narrowly on the costs of those activities, rather than a calculation based on the full \$20,366,000 costs of FSANZ. See **Figure 11 (p36)** of the CRGs for an illustration of the difference between 'total entity' costs and the allocation of costs to a cost-recovered activity, or 'cost object'.

Rather than loading all overheads onto RG staff, FSANZ should only include the overheads specifically related to supporting RG staff (such as office rent, IT systems and human resources). The dCRIS assumes that all non-RG staff costs are involved in tasks that support RG staff, which results in an overestimation of overheads, and **does not comply** with the CRGs.

Recreation leave appears to have been double counted. It is removed from the calculation of billable hours but also added into costs (Table 2 of dCRIS). It is only appropriate to either remove leave from days worked (on the denominator), or add a leave provision to total remuneration (on the numerator). The FSANZ method incorrectly takes 13 months' pay and divides it by 11 months' worth of hours worked, as explained below:

⁴ See FSANZ Annual Report

Consider two employees, John and Jenny, both receiving total remuneration (including superannuation) of \$110,000 per year:

- John takes 20 days of recreation leave during the year, and all the usual holidays and average amount of sick leave, so John works 217 days and 1302 hours (as per FSANZ Table 2). The cost per billable hour for John is ~\$85/hr (\$110,000/1,302) before adding overheads and admin/non-RG staff.
- Jenny takes no recreation leave (but all the other usual public holidays and average amount of sick leave) so at the end of the year has worked 237 days (not 217 days) which is 1,422 hours (237 * 6), and at the end of the year has a leave accrual of 20 days. That costs FSANZ an additional 9 per cent (i.e. 13 months' worth, due to the leave provision), which is ~\$120,000. The cost per billable hour for Jenny is also ~\$85/hr (\$120,000/1,422) excluding overheads.

The FSANZ calculation, in effect, takes Jenny's 13-month salary cost (\$120,000 including the leave accrual) and divides it by John's 11 months of hours worked (1,302), i.e. ~\$92/hr (\$120,000/1,302). But Jenny didn't work 1,302 hours, she did 1,422 in order to generate that 13th month of cost relating to her leave provision. John ended the year with no annual leave accrued so only cost 12 months' worth. Either way, John and Jenny both cost around \$85/hr, give or take some rounding, not \$92/hr (plus overheads).

The above is a simple calculation of how much you pay someone in a year, divided by how much work they get done in a year (allowing for leave, etc). Obviously in a large organisation there needs to be enough staff to cover people when they are on leave. But if you employ 13 'Johns' that results in 13 * \$110,000 per year and yields 13 * 1302 hours worked, in order to cover 12 months of staffing requirements, which still equals \$85 per hour. Or you can employ 12 'Jennys', which take no leave so you only need 12 * \$120,000 and that yields 12 * 1422 hours works, which still equals ~\$85 per hour (plus overheads). Any combination in between (e.g. 6.5 'Johns' and 6.0 Jennys full-time equivalent (FTE) yields the same result).

Although this may appear a minor discrepancy in the FSANZ model, when multiplied over an 800hr general procedure application, for example, this could result in a difference of \$5,600 to the total cost, which is not an insignificant amount.

Indicative hourly rate

An indicative calculation of an appropriate hourly rate would be to take half of the 'overheads' as relating to RG staff, remove the additional month of pay and apply that to the number of billable hours, as follows (using the amounts on p9 of the dCRIS):

$$(\$10,531,000 \times 0.9 + \$9,835,000 \times 0.5) \div 104,629 = \$138 \text{ per hour}$$

To do this more accurately, FSANZ would need to provide data on:

- Staff costs for RG staff excluding the loading for recreation leave (i.e. the \$10,531,000 figure, prior to adjusting for the leave that is already accounted for in the denominator of 104,629).
- The proportion of non-RG staff that are involved in supporting RG staff (i.e. only including human resources, IT support, Executive oversight and rent), and removing activities that are not recoverable from the \$9,835,000 figure.

CropLife **would support** a revised dCRIS that sets out an hourly rate based on the correct allocation of overheads to the specific activity in line with the requirements of the CRGs. Given that only 1-2 per cent of FSANZ work is cost recovered (dCRIS, p2) the correct hourly rate may be even less than that estimated by CropLife in the indicative calculation above.

Documents released to CropLife under a *Freedom of Information Act* request in 2013 indicated that in 2011 the FSANZ Chief Financial Officer (CFO) at the time had significant concerns that including corporate overheads and overhead area salary expenses would "over complicate the process and may not withstand external scrutiny".

CropLife shares the concerns first raised in 2011 by the FSANZ CFO at the time, and also raised by CropLife in submissions in 2012 and 2013 that it is inappropriate and inconsistent with the CRGs to allocate all on costs and overheads of the FSANZ annual operating budget to RG staff.

Technical Issues

A few technical or typographical issues with the dCRIS are as follows:

- It is not clear whether time spent on supporting RG staff (e.g. IT support) is calculated at the same rate of six hours per day. While an assumption of six hours per day spent actively working on applications appears to be appropriate for RG staff, it is unclear whether a similar fraction is applied to the \$9,835,000 in other corporate and admin staff costs, so that only the fraction of a day spent supporting RG staff is included in the calculations.
- The comparison in Table 3A only shows the proposed hourly charge column from Table 3 in the 'Proposed up-front cost AUD' column, rather than using the 'Total fees AUD' column from Table 3. This has the effect of understating the up-front cost increase.
- The Headcount chart is wrong, as the number of RG staff and non-RG staff (~60 and ~80 people) in January 2016 adds to more than the total headcount in January 2016.
- The FTE chart may also be wrong, as the FTE of RG staff looks low at ~18 in January 2016.
- The NZD calculation for 650 hours in Table 3 (\$124,725) is wrong, and less than the AUD amount.
- As noted earlier, the two charts in Support Document 1 need a label on the horizontal axis (applications in order of date lodged?).

Alternative Means of Assessing Applications

CropLife **strongly supports** FSANZ's existing initiatives to finalise and formalise safety assessment sharing with food safety regulators in other jurisdictions.

CropLife believes this collaborative process will provide a number of clear benefits to both regulatory agencies and also technology developers. The initiative encourages information sharing and peer review that will serve to strengthen the working relationship between regulators. It also provides a platform to reduce the workload of each agency through harmonised evaluation methodologies.

CropLife member companies strongly believe that safety assessment sharing represents a pioneering step in improving the efficiency of the assessment processes for GM foods. Shared dossier preparation will allow for the creation of higher quality applications and result in time saving efficiencies for companies. The initiative also creates a mechanism that would allow for companies to submit standardised regulatory submissions in multiple countries, facilitating regulatory harmonisation and decreasing the risk of asynchronous approvals.

For the purposes of the dCRIS, the formalisation of safety assessment sharing may present an opportunity for FSANZ to gain greater efficiencies in its costs, resulting in a lower cost recovery hourly rate for applicants.

Implementation Timeframe

CropLife **does not support** the implementation timeframe as outlined on page 21 of the dCRIS. To allow for business planning of applicants for a 70 per cent increase in fees, the very earliest CropLife will support amendments to the Regulations taking effect is 1 January 2018, but preferably at start of the following financial year, 1 July 2018.

Publication of Data

CropLife notes that in spite of the of the large fees charged by FSANZ, applicants receive nothing in the form of data protection in return. Other than those declared confidential commercial information, studies submitted by applicants for use in the assessment process are published on the internet by FSANZ and become available for access by anyone, including overseas competitors.

3 CONCLUSION

CropLife **does not support** the dCRIS in its current form.

CropLife could **support** a revised dCRIS in the which overheads were correctly allocated in accordance with the Australian Government's Cost Recovery Guidelines and only relating to the **efficient costs** of the **specific activity** undertaken, and not the overhead costs of the whole organisation.

CropLife looks forward to working with FSANZ to revise the dCRIS and develop an ABC model that is in line with government guidelines and the expectations of the Department of Finance.